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Probation Overview

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Probation Overview

1-01 INTRODUCTION

A. Authority and Responsibility

The Michigan Constitution of 1963 provides for a uniform state court system headed by the Michigan Supreme Court. The Constitution provides for the following levels of courts: Michigan Supreme Court, Michigan Court of Appeals, circuit courts, district courts, municipal courts, and probate courts. MCR 8.110 and MCL 600.8271 authorize the chief judge of the court to hire, supervise, and discharge employees of the court.

The district court has exclusive jurisdiction over all civil litigation up to $25,000.00. It also handles garnishment and eviction proceedings. In the criminal area, the district court has jurisdiction over all misdemeanors where punishment does not exceed one year, and arraignment and preliminary examination in felony cases. The district court also sets and accepts bail on felony cases.

B. Probation Department Established

In each district of the district court, the judge or judges of the district may establish a probation department within a district control unit. The necessary and reasonable expense of a probation department shall be borne by the district control unit. (MCL 600.8314)

C. Function of Probation Department

1. Purpose of Probation

Probation, which is granted by the judge, is a sentence that allows the offender to live in the community under the supervision of a probation officer. Theoretically, this decision is made after careful study of the offender's background, behavior, and potential for success. It is based on the philosophy that the rehabilitation of some offenders might be hampered by incarceration and will be supported and encouraged by supervised freedom.

Probation is a desirable disposition in appropriate cases because it maximizes the liberty of the offender while vindicating the authority of the law and protecting the public from further violations. Probation can positively advance the rehabilitation of the offender by continuing normal community contacts such as employment, education, counseling, etc. It can minimize the impact of conviction upon innocent dependents of the offender. Probation avoids the negative effects of incarceration which can severely complicate the offender's reintegration into the community.

2. Supervision

One of the primary functions of the probation department is to supervise probationers to ensure that they comply with the terms and conditions of the court's order. The type and degree of supervision will vary from court to court. In some probation departments it is the probation officer's responsibility to counsel probationers and to act as treatment agents. In other departments the probation officer is only expected to supervise the probationer and the supervision may be extremely limited, such as nonreporting, telephone, or mail report status. The supervision model chosen may depend on the availability of resources, the caseload of the probation officers, the professional training, and the needs of the probationers.

3. Case Management

Some courts view probation officers as case managers. In this function, the probation officer refers the probationer to qualified treatment personnel in the community and introduces the probationer to vocational, educational, and other resources. In the past, the probation officer was depicted as the sole provider of services. However, this philosophy is steadily changing due to a characterization of the probation officer as a community resource manager with extensive knowledge of community agencies and resources.

4. Screening and Assessment

a. Authority

Before imposing sentence for a violation of MCL 257.625(1), (3), (4), (5), (6), (7), or (8) or a local ordinance substantially corresponding to MCL 257.625(1), (3), (6), or (8), the court shall order the person to undergo screening and assessment by the court (in-house assessment) or the Michigan Department of Community Health (out-of-house assessment) to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services. See also Section 5-02.

b. Purpose

Screening and assessment determines whether the offender will benefit from rehabilitation services, including alcohol or drug treatment programs, for the purpose of assisting judges in determining the most appropriate sentence. As the number of drunk and impaired driving arrests increases, probation departments are conducting more screening and assessments each year. This increase has a definite impact

on the type and degree of supervision that each probation department maintains.

c. Fees

Courts, probation departments, and substance abuse agencies are authorized to collect a screening and assessment fee. (MCL 257.625b[5]) Fees will vary among courts and agencies. See Section 5 for details.

D. Desired Educational Requirements

Most courts require probation officers to have graduated from college with a bachelor's degree in one of the following areas: criminal justice, sociology, psychology, social work, counseling, or a related field.

If the court is a designated screening and assessment agency, probation officers are required to meet the qualifications and assessment procedures established by the Michigan Department of Community Health. See Section 5 for details.

E. Surety Bond Requirements

Probation officers are not required to be bonded.

F. Other Requirements

If probation officers will be using the Law Enforcement Information Network (LEIN) to run criminal history or driving records, the Criminal Justice Information Systems (CJIS) Policy Council requires that persons hired after July 1, 1996, must have a background screening using fingerprint identification.

If probation officers will be preparing notices or performing other deputy clerk functions, they must be sworn in as deputy court clerks.

G. Overview of the Criminal Justice System

The criminal justice system has three separately organized parts – police, courts, and corrections – each with specific tasks. Each part is dependent upon the others. The following chart sets forth the process in simplified form.

1-02 ROLE OF PROBATION OFFICER

A. Statutory Authority

In all prosecutions for felonies or misdemeanors other than murder, treason, criminal sexual conduct in the first or third degree, armed robbery, and major controlled substance offenses, if the defendant has been found guilty upon verdict or plea and the court determines the defendant is unlikely to again engage in an offensive or criminal course of conduct and the public good does not require that the defendant shall suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer. (MCL 771.1[1])

B. Duties

1. General

A district court probation officer, under the general direction of the chief judge, judge, or court administrator, conducts investigations and prepares information to assist the district court judge in determining appropriate sentences of individuals brought before the court. The district court probation officer shall supervise the probationer during the term of probation and may recommend relevant programs for rehabilitation.

2. Specific

a. Screening and Assessment

Many probation officers conduct screening and assessments of individuals convicted of driving while intoxicated or driving while impaired. In providing the court with information identifying an individual's involvement with alcohol or drugs, the probation officer must take into consideration any risks involved when recommending treatment versus incarceration. See Section 5 for details.

b. Presentence Investigation

One of the principal responsibilities of a probation officer is investigating the background of individuals awaiting sentencing for criminal convictions. Presentence investigations involve reviewing the offender’s arrest report, driving record, criminal history, employment record, and other pertinent information. In addition, the probation officer will interview the offender and, possibly, the offender's family, employer, and school authorities. The police, complainant/victim, and others may also be interviewed, if necessary. See Section 4 for details.

c. Sentencing Recommendation

After the presentence investigation has been conducted, the probation officer must analyze the gathered information. The probation officer assesses the offender's background and character, and makes a determination regarding the probability of future criminal behavior and how to prevent further illegal activities. The probation officer then prepares a report recommending the most appropriate court action.

d. Supervision

The probation officer supervises offenders placed on probation by the district court to ensure compliance with the order of the court. See Section 7 for details. (MCL 771.1[1])

e. Charging Probation Violation

The probation officer is responsible for bringing charges of probation violation against probationers. A "preponderance of the evidence" is the standard of proof for probation violation hearings in Michigan. See Section 7 for details.

f. Bond Investigation

If probation officers are responsible for bond investigations, they need to be aware of the information considered relevant in establishing bond and conditions of bond, which is listed in MCR 6.106(F)(1). See Section 2 for details.

g. Other

1) The probation officer may be required to provide probationers with guidance on personal, financial, and related problems. Probation officers generally refer probationers to outside agencies for counseling.

2) The probation officer may be required to assist the probationer in securing employment or entering school, or can refer the probationer to training to improve his or her work skills.

3) The probation officer refers probationers to rehabilitation programs and monitors their progress. The probation officer also arranges community service work programs for the probationer.

C. Liability

1. Statutory Authority

Statute indicates that all governmental agencies shall be immune from tort liability in all cases wherein the governmental agency is engaged in the exercise or discharge of a governmental function. (MCL 691.1407) For more details on liability protection for the judiciary, see Section 13 of the *Michigan Court Administration Reference Guide* at http://new.courts.mi.gov/Administration/SCAO/Resources/Pages/Michigan-Court-Administration-Reference-Guide.aspx.

2. Conditions

Each officer and employee of a governmental agency and each volunteer acting on behalf of a governmental agency shall be immune from tort liability for injuries to persons or damage to property caused by the officer or employee while in the course of employment or service or by a volunteer while acting on behalf of a governmental agency if the following specific conditions are met. (MCL 691.1407[2])

a. Acting Within Scope of Authority

The officer, employee, member, or volunteer must be acting or reasonably believe he or she is acting within the scope of his or her authority.

b. Legitimate Governmental Function

The governmental agency must be engaged in the exercise or discharge of a governmental function.

c. No Gross Negligence

The conduct of the officer, employee, member, or volunteer must not amount to gross negligence that is the proximate cause of the injury or damage. "Gross negligence" means conduct so reckless that it demonstrates a substantial lack of concern for whether an injury results.

D. Ethical Considerations

Ethics are the principles of conduct governing an individual or group, especially a professional group. Ethical principles help people make appropriate decisions and respond properly in difficult situations. Following the ethical principles of a profession reduces the risk of job loss, criminal charges, and liability for unsuitable behavior. There are a series of judicial ethics opinions published by the Subcommittee on Judicial Ethics Opinions in the *Michigan Ethics Opinion Manual*. See the Section 1 Appendix for more information. In

addition, there is a Model Code of Conduct for Court Employees, which can be found at http://new.courts.mi.gov/Administration/SCAO/Resources/Documents/other/codewithguidelines.pdf. See also the Michigan Association of District Court Probation Officers Code of Ethics below.

Michigan Association of District Court
Probation Officers Code of Ethics

As a member of the Michigan Association of District Court Probation Officers:

I shall be dedicated to provide my professional service to the District Court, to the community in which I reside, and to the offender over whom I have a supervisory responsibility.

I shall uphold the laws of the State of Michigan and of the locale in which I hold office, with dignity, and with awareness of the prestige and stature of the judicial system of which I am an integral part.

I shall strive to be objective in the performance of my duties, respect the inalienable rights of all persons, appreciate the inherent worth of any individual, and hold sacred individual confidences which are disclosed to me without jeopardizing the personal safety of others.

I recognize my office as a symbol of public faith and I accept it as a public trust.

I shall continually attempt to improve my professional standards, by seeking further knowledge and understanding.

I shall cooperate with my peers, as well as with other related agencies.

I shall conduct my personal life with propriety in all phases, will neither accept nor grant favors in connection with my office as a Probation Officer, and will place loyalty to principles above personal gain.

I shall continually strive to achieve these objectives and ideals, dedicating myself to my chosen profession as a Probation Officer.

I recognize that my professional membership in the Michigan Association of District Court Probation Officers may be held as long as I am true to this Code of Ethics.

Adopted May 26, 1989

E. Arrest Powers

1. Peace Officer

A peace officer has specific statutory authority to arrest a person on reasonable cause to believe a condition of probation has been violated. However, a probation officer who is not also a sworn member of a law enforcement agency is not a peace officer. Thus, for purposes of arrest, a probation officer who is not a peace officer is a private person. The authority of a private person to arrest is set forth in MCL 764.16. This statute authorizes a private person to make an arrest when a felony has been committed in his or her presence or when the person to be arrested is known to have committed a felony.

A probation officer who wishes to have the power of arrest over probationers should be deputized by a local law enforcement agency.

2. Arrest of Parole Violator

According to MCL 791.239, a Department of Corrections probation officer has statutory authority to arrest a parole violator. However, this authority does not extend to a district court probation officer.

3. Conditions in Probation Order; General Rule

Pursuant to MCL 771.4, the court may provide for the apprehension, detention, and confinement of a probationer accused of violating a probation condition or conduct inconsistent with the public good in its probation order or by general rule. This may imply that a probation officer has the authority to arrest a probationer if the court includes in its probation order the specific provisions to do so. However, Michigan Court Rule sets forth (by general rule rather than probation order) the procedure by which the court may make these provisions. In MCR 6.445(A), on finding probable cause to believe that a probationer has violated a condition of probation, the court may issue a summons or issue a warrant for the arrest of the probationer. The finding of probable cause is based on a motion brought by the probation officer in compliance with MCR 3.606, which states that a contempt committed outside the immediate view and presence of the court will be acted upon by show-cause order or bench warrant only upon a proper showing on ex parte motion supported by affidavits. Therefore, the court may not include in its probation order (as the statute suggests) the specific provisions for apprehending and detaining a probationer. According to MCR 1.104, rules of practice set forth in statute, if not in conflict with any court rule, are effective until superseded by rule adopted by the Supreme Court. See also Section 7-05.

1-03 RULES OF CONFIDENTIALITY

A. Access to Records

All records and reports of investigations made by a probation officer and all case histories of probationers shall be privileged or confidential communications not open to public inspection. Judges and probation officers shall have access to records, reports, and case histories. The probation officer, the assistant director of probation, or the assistant director's representative shall permit the attorney general, the auditor general, and law enforcement agencies to have access to the reports, records, and case histories. The confidence between the probation officer and the probationer or defendant under investigation shall not be violated. The probation officer must not provide access to other agency's reports that are logged in probation files. (MCL 791.229) See also *Howe v Detroit Free Press*, 440 Mich 203; 487 NW2d 374 (1992).

The only communications of the defendant which are privileged are those made to the probation officer within the scope of his or her statutory responsibility. (*People v Burton*, 74 Mich App 215; 253 NW2d 710 [1977])

The statutory privilege pursuant to MCL 791.229 precluding discovery of a probation report may be waived. (*Howe v Detroit Free Press*, 440 Mich 203; 487 NW2d 374 [1992]) See also Section 8, page 8-02-02.

B. Releasing Information

The rules of confidentiality require a release of information signed by the probationer or defendant when a probation officer is conferring with other professionals about the individual. Confidentiality limits what can be said when consulting the individual's significant others. It also limits what can be revealed to a witness in the probationer's or defendant's case. Discussing probationers or defendants within earshot of others violates the rules of confidentiality.

See also Section 4-05 and Section 8.

1-04 DEFINITIONS AND TERMS

Adjournment - The postponing of a case or session of court until another time.

Affidavit - A written statement of fact that is verified by oath or affirmation.

Amendments to Probation Order - Probation officer petitions the court for changes to the probation order.

Appeal - The Michigan Supreme Court, in *People v Pickett*, 391 Mich 305; 215 NW2d 695 (1974), established that a probationer has a right to appeal either an order of probation or a probation revocation.

Arraignment - A hearing by the court in which the defendant is informed of the charges against him or her, is appointed counsel if necessary, and is permitted to plead to the charges. The arraignment portion of the probation revocation process is necessary to assure the probationer due process with regard to the charges of probation violation.

Bail Bond - A financial obligation signed by the defendant and those who serve as sureties to guarantee the defendant's future appearance in court.

Bench Warrant - An order issued by the court (from the bench) for the arrest of a person for violating a court order.

Bind Over - To hold for trial; a finding at a preliminary examination that sufficient evidence exists to require a trial on the charges against the defendant.

Bond Investigations - The bond ensures that the defendant appears in court. The bond investigation gives the judge, who sets the bond, all the available information about the defendant to help determine the type and the money value of the bond needed to ensure the defendant's court appearance.

CCH - Computerized Criminal History. Maintained by the Michigan State Police and accessible by criminal justice agencies via the Law Enforcement Information Network (LEIN) and by the public via the Internet connection I-CHAT.

CTN - Criminal Tracking Number assigned by the prosecuting attorney.

Circuit Court Misdemeanor - Includes any offense the statute designates as a misdemeanor which is punishable by more than one year imprisonment. It is processed in circuit court like a felony. Also referred to as a "high court" misdemeanor.

Citation - The court copy (original) of the ticket; also serves as the original complaint in the case.

Civil Infraction - An act or omission prohibited by law which is not a crime, for which civil sanctions may be ordered. Many traffic violations are classified as civil infractions.

Client Information Release Authorization - A waiver form for the defendant/probationer to authorize a counselor, social worker, etc., to release information contained in the client's records to the probation officer. The specific type of information must be disclosed in addition to the purpose and the need for the disclosure.

***Cobbs* Plea** – A defendant who pleads guilty in reliance upon a judge's preliminary evaluation regarding sentence has an absolute right to withdraw the plea if the judge later determines the sentence must exceed the preliminary evaluation. (*People v Cobbs*, 443 Mich 276; 505 NW2d 208 [1993])

Complainant - One who makes a complaint; often interchanged with plaintiff and victim.

Confidentiality - Probation records and reports are privileged and confidential according to Michigan statute and case law. (MCL 791.229) (*Howe v Detroit Free Press*, 440 Mich 203; 487 NW2d 374 [1992]) Access is authorized only for judges, probation officers, the attorney general, auditor general, and law enforcement agencies.

Contempt of Court - An act which hinders or obstructs a court in the administration of justice or lessens its authority or dignity.

Controlled Substances Act - See MCL 333.7401 *et seq.*

Convict - To find or adjudge guilty of a criminal offense.

Crime Victim's Rights Act - An act to establish the rights of victims of crime and juvenile offenses; to provide for certain procedures; to establish certain immunities and duties; to limit convicted criminals from deriving profit under certain circumstances; to prohibit certain conduct of employers or employers' agents toward victims; and to provide for penalties and remedies. (MCL 780.751 *et seq*.)

Defendant - The person against whom a crime is charged.

Deferred Judgment of Guilt – A judge may defer proceedings and impose probation with terms and conditions without entering a judgment of guilt for certain statutory offenses.

Delayed Sentencing Act - A judge may delay imposition of sentence for up to one year "for the purpose of giving the defendant an opportunity to prove to the court his eligibility for probation or such other leniency as may be compatible with the ends of justice and the rehabilitation of the defendant." (MCL 771.1)

Destruction of Records - The act of physically destroying information (including criminal records) in files, computers, or other depositories. Probation files should be destroyed pursuant to the *Records Retention and Disposal Schedule for Michigan Trial Courts, Schedule 16*.

Disposition - Determination of a case, whether by dismissal, plea and sentence, settlement and dismissal, verdict and judgment.

District Court - All criminal cases are commenced in district court. Felony cases may be bound over to circuit court after preliminary examination or waiver. Misdemeanors are tried in district court. Civil cases under $25,000.00 and summary proceedings for possession of real estate constitute most of the civil caseload.

District Court Magistrate - In Michigan, a district court magistrate is a quasi-judicial official given the power to set bail, accept bond, accept guilty pleas, and sentence for traffic and other violations, and to conduct informal hearings on civil infractions.

Docket - See Register of Actions.

Expunge - To destroy; blot out; obliterate; erase. See Destruction of Records.

FAC - Failure to answer citation. When a person fails to answer a traffic citation (ticket), the court notifies the Department of State, which enters this information into its computer system. The defendant's license is suspended until the FAC is set aside after the case is disposed of and a fee is paid.

FCJ - Failure to comply with judgment imposed for violations of civil infractions that are issued on traffic violations; follows the same procedure as FAC.

Felony - A crime punishable by more than one year in the state prison, unless it is specifically stated to be a misdemeanor. Felonies are tried in the circuit court.

Holmes Youthful Trainee Act - A defendant, between the ages of 17 and 20 years, alleged to have committed a criminal offense may be assigned to youthful trainee status. This assignment may be made by the court of record having jurisdiction over the criminal offense, only with consent of the defendant or the guardian. Youthful trainee status is not a conviction and no civil disabilities may attach to this status. (MCL 762.11-.16)

Inactive Case - A pending case over which the court has no effective control; a case that is filed in court, but for some reason cannot be processed by the court, such as defendant absconded or was never arraigned.

Incarceration - Commitment to jail or prison.

Interim Bond - Refers to a bond that is set by a police officer when a person is arrested for a misdemeanor minor offense without a warrant. Any misdemeanor warrant may also have an interim bond endorsed on it by the issuing judge or district court magistrate. Interim bond allows the individual to be released, but be available for an arraignment.

Jury - A body of men and/or women sworn to consider the evidence presented and to deliver a true verdict or decision in a judicial proceeding. There are six jurors for district court in civil and criminal matters. In circuit court there are six jurors for civil matters and twelve for criminal matters.

***Killebrew* Agreement** - In *People v Killebrew*, 416 Mich 189 (1982), the court ruled that the role of the trial court in plea negotiations is limited to consideration of bargains between defendants and prosecutors. The trial court may not participate in negotiations, and where it chooses not to accept a proffered bargain or follow the prosecutor's recommendation, the defendant must be given the opportunity to affirm or withdraw a plea of guilty offered as part of the agreement. See also *People v Garvin*, 416 Mich 189 (1982).

LEIN - Law Enforcement Information Network. A communications and integrated system providing access to a variety of databases, including wanted persons, criminal history records, driver records, and vehicle records.

Magistrate - Unless prefaced by the words “district court,” the term magistrate used in the Michigan Code of Criminal Procedure refers to a judge of a court with jurisdiction over the matter discussed.

MADCPO - Michigan Association of District Court Probation Officers.

MCL - An acronym for "Michigan Compiled Laws," a series of law books.

MCR - An acronym for "Michigan Court Rules."

Minor - A person under the age of 18 years by civil law; a person under the age of 17 years by criminal and juvenile law.

Minor Offense - A misdemeanor or ordinance violation for which the permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed $500.00.

Misdemeanor - A violation of a penal law of the State of Michigan which is not a felony, or a

violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or by a fine that is not a civil fine.

MJI – Michigan Judicial Institute; the training department of the State Court Administrative Office.

Motion - An application to the court for the purpose of obtaining a certain order or decision in favor of the applicant.

Municipal Court - A court in which the authority is confined to the city or community where it is established. Municipal court civil jurisdiction is limited to $1,500.00. Civil jurisdiction is increased to $3,000.00 under certain circumstances. A few cities chose to retain this court rather than change to the district court system.

Nolle Prosequi – Latin for "to be unwilling to pursue." A formal entry made on the court record by which the prosecutor declares he or she will not further prosecute the case, usually based on some form of agreement. The prosecutor reserves the right to initiate the case again.

Nolo Contendere/No Contest - Latin for "I will not contest it." It is a plea treated as a guilty plea except that it is not an admission of guilt, but an indication of readiness to accept conviction and sentence rather than go to trial. By pleading nolo contendere, the defendant is not required to tell the court what he or she did. This allows the defendant to avoid incriminating testimony in a pending civil action or one that may later be filed against the defendant.

Notice of Hearing - Document notifying the scheduling of matters in court. Pursuant to MCR 2.119, notice of hearing must be served at least nine days before the time set for hearing, if served by mail, or at least seven days before the time set for the hearing, if served by delivery pursuant to MCR 2.107(C)(1) or (2).

Offense - A crime or ordinance violation.

Order - A direction of a court made or entered in writing; one which terminates the action itself, or decides some matter litigated by the parties.

Ordinance - A local law or regulation enacted by a municipal government. It has no effect outside that city or village.

ORI - Originating agency number. See the *Law Enforcement Information Network Manual*.

PACC Charge Code - A code used by the county prosecutor or attorney general to identify the

crimes charged. PACC codes are not assigned to ordinance violations. The number is related to the MCL cite.

Parole - Conditional release from prison before the end of sentence; if the parolee observes the conditions, he or she need not serve the balance of the term.

Peace Officer - Any public officer or official having authority to arrest to enforce the law and preserve peace; generally includes any sheriff, deputy sheriff, any state or municipal officer, and any state conservation officer.

Personal Recognizance - The release that is gained in a criminal case without having to post money or have a surety sign a bond with the court. The court takes the defendant's word that he or she will appear for a scheduled matter or when advised to appear.

Petition - An application made in writing to the court.

Plaintiff - In criminal cases, the state or municipality is the plaintiff and is represented by the prosecuting official.

Plea - The defendant's response to a criminal charge, such as not guilty, guilty, or nolo contendere.

Plea Bargaining - An arrangement between the prosecutor and defense counsel where the defendant agrees to plead guilty to a particular offense in return for the prosecuting attorney's agreement to allow such a plea (usually to a reduced charge) or a promise to dismiss some other offense pending against the defendant.

Plead - To answer the indictment, information, complaint and warrant, citation, appearance ticket, etc.; to answer an allegation.

Preliminary Examination - A hearing in a felony case before a district court judge at which the prosecution presents evidence (the defendant and his or her counsel being present) from which the district judge decides whether there is probable cause to believe that a crime has been committed and that the defendant committed the crime and to "bind over" or refer the defendant to the circuit court for trial.

Presentence Investigation - Investigation of the relevant background of a convicted offender. Usually conducted by a probation officer employed by a court and designated to act as a sentencing guide for the sentencing judge.

Presentence Report - Written report prepared by the probation department containing the family and personal history of the accused, evaluation of the crime and its ramifications, and recommendations as to sentencing. Required in all felony cases. Presented to the judge as a guide in determining sentence.

Presiding Judge - The judge conducting a hearing or trial. The judge in charge of a case.

Pretrial Conference - Hearing in a criminal or civil case between the judge and the attorneys to discuss any matters that can be resolved prior to trial, to assist in expediting or simplifying the trial. Such hearings are usually informal and without clients participating.

Probation - Allowing a person convicted of an offense to remain in the community instead of going to jail or prison as long as the offender fulfills the conditions of the probation. The offender's probation is usually supervised by a probation officer. If a person violates probation, the probation can be revoked and the defendant resentenced.

Pro Per or **Pro Se** - A person who represents himself or herself in court without an attorney.

Prosecuting Attorney - A public officer whose duty is to institute and conduct criminal proceedings on behalf of the people.

PSI - Presentence investigation.

Public Defender - An attorney paid by the county to defend a person who is indigent.

Quash - To nullify a conviction or order.

Record - The word for word (verbatim) account by the official court reporter/recorder of all proceedings at the trial.

Register of Actions - A written list of all important acts performed in court in an individual case from beginning to end. The register of actions (for acts done), the case file (for documents filed), and any transcript of proceedings together form the "record."

Remand - To send a case back to the court from which it came for further proceedings. To send a case back to the lower court from which it was appealed, with instructions as to what further proceedings should take place.

Restraining Order - An order of the court which is intended to restrain a person's action and preserve the status quo until a hearing can be held to determine if a temporary injunction should be issued.

SCAO - State Court Administrative Office.

Screening and Assessment - A procedural method in which the sentencing judge shall order and receive the facts pertaining to the defendant's alcohol/drug-related history, prior offenses, and driving record; blood-alcohol concentration results; screening and assessment testing procedures and results; current alcohol/drug dependency; prior alcohol/drug education or treatment; and any assessment recommendations for proposed rehabilitation services.

Sentence - Punishment imposed upon a defendant following conviction in a criminal proceeding.

Show-Cause Order - An order to appear as directed and present to the court reasons and considerations why certain circumstances should be continued, permitted, or prohibited.

SID - State Identification number. A number provided by the Department of State Police based on positive fingerprint identification. It is generated when the law enforcement agency reports an arrest through the prosecutor to the Department of State Police.

State Case - Refers to a violation of state law. The term is most often used in district courts and municipal courts to distinguish between local ordinance violations and violations of state statute.

Statutes - Laws in the State of Michigan enacted by the state Legislature.

Stay - The suspension of a judicial proceeding by court order.

Subpoena - A writ or order to compel attendance in a court with a penalty for failure to do so.

Verdict - The jury's decision or finding on the issues submitted to it for determination.

Warrant Recall - A procedure for removing outstanding warrants from LEIN in order to avoid repeated or mistaken arrests.

With Prejudice - A claim dismissed "with prejudice" means the prosecution in a criminal case is forever barred from bringing criminal proceedings on the same claim.

Without Prejudice - A claim dismissed "without prejudice" may be the subject of a new criminal proceeding.

Writ - A court order giving the authority to require the performance of a specific act.

1-05 MICHIGAN ASSOCIATION OF DISTRICT COURT PROBATION OFFICERS

A. History

The Michigan Association of District Court Probation Officers (MADCPO) was originally founded as the Michigan Association of Probation Services, Inc. (MAPS) in 1970. Prior to 1970, district court probation officers were members of the Michigan Correctional Association. Annual conferences were held for parole, probation, and correctional officers, but conference programming centered around issues applicable to corrections and parole, with little attention given to the specific needs of district court probation.

In late 1969, a group of district court probation officers met to establish their own organization. In 1970, MAPS, Inc. was founded. An annual conference was established to focus on the education and information needs and issues of district court probation. In 1989, the name of the organization was changed to the Michigan Association of District Court Probation Officers.

B. Purpose

The basic mission of the association has greatly expanded over the years in order to conform and adapt to the changing needs of the membership. The association, by way of its members, fosters the notion that probation officers are a viable and integral part of the Michigan judicial system. The association is concerned with enhancing the individual professional status of its members. In addition, members seek involvement in the legislative process in an effort to influence legislation which directly affects the function of the probation officer.

The association participates in a wide variety of functions and decision-making processes that affect the work of probation officers. Members have served in various capacities with the Michigan Court Forms Committee, the Chief Judge/Court Administrators Manual Committee, and the District Court Judges Association, and continue to remain involved in committees. In addition, the association works closely with the Michigan Judicial Institute (MJI) in providing educational programs to probation officers.

The association continues to expand the scope of its influence through increased membership in other related organizations and groups.

C. Membership

Information about membership can be obtained by contacting the regional representative or any association officer, by referring to the association newsletter, by contacting a probation officer who is a member, or by visiting the association's website at www.madcpo.org.

D. Directory of Probation Departments

The first Directory of District Court Probation was compiled and distributed in 1984 in order to provide an accurate and useful tool for probation departments and service providers. An abridged directory update of additions and changes was provided in 1985. New directories are now compiled every two years. The directory contains phone numbers, e-mail addresses, contact persons for community service programs, victim impact panels, and fax numbers. It also contains an alphabetical listing of probation officers in the state and regional reference numbers. The directory is available through the association's current newsletter/directory coeditors.

E. Newsletter

The association publishes newsletters in the fall, winter, and spring of each year and mails them to all probation officers and service providers who request a copy. To receive a copy, contact the current newsletter/directory coeditors.

F. Annual Conference

An annual conference is held in May of each year. Locations vary and are selected by the executive board. In addition to the educational benefits, the conference provides probation officers the opportunity to meet and exchange ideas with their colleagues. An annual general membership meeting is also conducted at the conference, at which time the election of officers, regional representatives, and alternates is held.

APPENDIX 1

Michigan Ethics Opinion JI-48

Michigan Ethics Opinion JI-55

Michigan Ethics Opinion JI-64

Michigan Ethics Opinions

JI-48, March 19, 1992

A judge of a multiple judge district court gave offenders the option of either performing a designated number of hours of community service work, or making a cash contribution to a charity, designated by the judge. Each participating judge randomly selected charities to be included in the program. There was no written policy identifying criteria for charities to become eligible to receive funds.

The sum of money paid by the offender, in lieu of performing community service work, was set by the sentencing judge. Donations were paid to the court clerk's office and deposited into a county "restitution" account. Disbursements were made randomly each calendar quarter to the charities selected by the sentencing judges.

The issue presented was whether or not the sentencing practice utilized by the district court judges violated ethics rules.

MCJC 5B (2) states:

"(2) A judge should not individually solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose,...."

If judges are forbidden to solicit for charity, clearly judges cannot direct contributions by requesting or requiring offenders to donate contributions in lieu of fines, jail time, or community service, to charities designated by the judge. The judicial imposition of dollars for hours also discriminates in favor of those more affluent offenders, who have the means to buy out of community service work.

Furthermore, MCJC 3A (1) provides a judge should be faithful to the law in performing adjudicative responsibilities, and that MCJC 3A (9) urges judges to "avoid the imposition of humiliating acts or discipline, not authorized by law in sentencing ...."

JI-55, June 22, 1992

In sentencing defendants in criminal cases involving controlled substances or a minor in possession of alcohol, judges of a district court order the defendant to make a financial contribution to the local school district's substance abuse education program. The payments were part of the original sentence. Payments were payable to the school district or to the probation department.

Although the facts presented in J-55 are distinguishable from J-48, the underlying reasoning of that opinion largely applies. Unless a sentencing practice has been authorized by law, a judge's imposition of that sentence is unethical.

JI-64, December 21, 1992

A number of inquiries were received from judges seeking guidance regarding the propriety of certain sentencing proposals. These proposals are distinct from those outlined in statutes.

1. May a judge assign probationers/defendants to perform maintenance work in the municipality, in which the court is located? The assignment may be mandatory or an option to incarceration or other community service activities.

2. To what extent may a court contract with an outside organization to create and administer educational or rehabilitative programs which a judge may require a defendant to attend and/or to which a judge may require a defendant to make a financial contribution?

3. If a judge sentences a defendant to participate in an educational or rehabilitative program operated by an outside organization, may the sentence also require payment to the court of the fee charged by the outside organization, which fees are then turned over to the organization by court staff; may the organization operate the program on court premises?

4. If an outside organization which offers educational or rehabilitative programs also has a political agenda, which may or may not be incorporated into the program, may a judge nevertheless sentence defendants to attend the program? Does it matter whether the program charges a fee?

Answers

1. In this instance, the sentencing does not involve money, and the beneficiary is the public municipality.

2. There is nothing in the ethics rules which prohibits a court from contracting for services with an outside organization, whether the organization is charitable/civic or some other type.

   As long as the judge does not personally benefit from referrals to a particular agency, there is nothing which would ethically prevent the judge from making sentencing referrals to an organization of which the judge is a member.

   When the program is provided by an independent, outside organization, there is always danger that mandating participation in the particular program will be perceived as a judicial endorsement, or using the prestige of office for the interest of the outside entity. This perception can be minimized by offering the defendant participation alternatives, rather than the judge designating the program which the defendant must attend.

The ethics code does not appear to proscribe a judge from referring a defendant to a program for education or rehabilitation and to the require the defendant to pay whatever the program costs directly to the program, but the judge should not make payment of program fees part of the sentence. No defendant should be turned away from a program for inability to pay the entire fee. An organization may establish a sliding fee based upon ability to pay and may, in calculating the fee to be charged, include a reasonable estimate of the amount needed to offset the number of individuals likely to be unable to pay the full fee. Any contract with an outside organization should explicitly address fees charged to sentencing referrals.

When contracting for services, a court should institute a fair selection procedure which would allow other interested organizations the opportunity to obtain the contract and should not grant exclusive rights to referrals to a particular outside organization.

3. A judge does not violate ethics rules merely by sentencing a defendant to attend a program which the judge knows charges a fee, as long as the selection was reached objectively, based upon the quality of the program and the particular needs of the defendant, and other available alternative programs have been given equal consideration. The judge and the judge's court and staff may not participate in the collection of monies from sentenced individuals to attend such programs.

   Ethics rules do not prohibit a judge or court from allowing an organization to hold its educational or rehabilitative program on court premises.

4. Inquiry provides several examples of organizations that might have such "political agendas," i.e., M.A.D.D., the Salvation Army, Alcoholics Anonymous, and Catholic Social Services. A definition of "political agenda" has not been provided to enable the committee to hypothesize generic examples.

   The ethical principles which must be observed are: (1) the danger of the sentence being perceived as lending the prestige of the judicial office to the private interests of the organization MCJC 2C; (2) the danger that the sentence will be perceived as the judge's endorsement of a particular ideology or set of views which unfairly "slants" the judge's judicial actions, MCJC 1; and (3) a judge should remain "unswayed by partisan interests, public clamor, or fear of criticism," MCJC 3A (1).

Pretrial Release

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Pretrial Release

2-01 INTRODUCTION

A. Authority and Purpose

A person charged with a crime is entitled to release on his or her own recognizance, conditional release, or release on money bail. (MCR 6.106[A], MCL 765.6)

The primary purpose of a bond is to help ensure that the defendant appears in court at all times as directed.

B. Role of Arresting Agency

Pursuant to the Crime Victim's Rights Act, the arresting agency is responsible for providing information to the victim of the reported crime. (MCL 780.751 *et seq*., MCL 780.811 *et seq*.) According to MCL 780.755 and MCL 780.815, the law enforcement agency having responsibility for investigating the crime must give the victim notice of the availability of pretrial release for
the defendant and other related information.

C. Role of Probation Officer

When a bond investigation is part of a probation officer's responsibilities, the investigation is conducted to provide the judge or district court magistrate with the information appropriate and necessary to determine the type, amount, and conditions of the bond.

Particular guidelines and procedures for probation officers to follow when conducting bond investigations will vary to meet the needs of each particular jurisdiction. While some courts may require an extensive amount of verified information, others expect a less comprehensive effort to help expedite the process of establishing an appropriate bond. The length and complexity of a bond investigation should be established by an agreement between the court and the probation department.

D. Role of Court

At the defendant's first appearance before the court, the court must order the defendant be held in custody or released as provided in MCR 6.106. This decision is made after considering various factors, some of which are outlined in MCR 6.106(F)(1).

2-02 BOND INVESTIGATION

A. Establishing File

Generally, a file is not established until a presentence investigation is requested. However, if probation officers are responsible for bond investigation, a file should be established at this time.

B. Investigation Procedure

1. Personal Interview

The bond investigation begins with a personal interview of the defendant under the scope of the factors allowed pursuant to MCR 6.106(F). The information collected is verified to ensure the accuracy of statements made by the defendant. Personal or telephone contacts with employers, counselors, spouses or family members, landlords, probation/parole officers, community members, and courts are the primary sources used to verify the information. Criminal and driving histories are also typically obtained and examined.

2. Factors Considered

The information considered relevant in establishing a bond and bond conditions is listed in MCR 6.106(F)(1) and includes:

a. prior criminal record (includes juvenile) (nonpublic record, see Section 8),

b. record of court appearances/nonappearances (nonpublic record, see Section 8),

c. substance abuse history,

d. mental condition,

e. reputation for dangerousness,

f. seriousness of offense,

g. probability of conviction,

h. presence of threats,

i. employment status and history,

j. availability of responsible members of community to vouch for or monitor the defendant,

k. ties to the community,

l. length of residence,

m. family ties, and

n. other factors bearing on risk of nonappearance or danger to the public.

Information beyond these factors cannot be used to sanction pretrial detention and is not permissible. The court rule specifically disallows any determination based on race, religion, gender, or economic status.

C. Report and Recommendation to Judge

A written report and recommendation should be provided to the court before the district court arraignment. The format of this report is not dictated by any statute or court rule. The content and style of the report should reflect the needs and requirements of the parties who will be using it as the case progresses.

The report should consider and reflect the factors in MCR 6.106(F) so the judge or district court magistrate has the necessary information for establishing bond. In accordance with court rules, the report should recommend a personal recognizance bond unless it is determined that a recognizance release will not ensure the defendant's appearance or that such release will present a danger to the public. (MCR 6.106[C])

2-03 ORDER FOR PRETRIAL RELEASE OR CUSTODY

A. Considerations and Statement of Reasons

As specified in MCR 6.106(B)(1), the court may deny pretrial release to a defendant who is charged with murder or treason, criminal sexual conduct in the first degree, armed robbery, kidnapping with the intent to extort, or committing a violent felony.

1. Custody Order

If the court determines that the defendant may not be released, the court must order the defendant held in custody for a period not to exceed 90 days after the date of the order. The court must state the reasons for an order of custody on the record and on the form approved by the State Court Administrative Office entitled "Custody Order." See SCAO-Approved form MC 240, Order for Pretrial Release/Custody, in the Section 2 Appendix.

2. Release Order

According to MCR 6.106(C) and (D), if the defendant is not ordered held in custody, the court must order the pretrial release on personal recognizance or an unsecured appearance bond, or conditional release with or without money bail. See SCAO-Approved form MC 240, Order for Pretrial Release/Custody, in the Section 2 Appendix.

In deciding which release to use and what terms and conditions to impose, if any, the court is to consider relevant information, including the following factors that are specified by MCR 6.106(F)(1). While the court must state the reasons for its decision on the record, the court does not have to make a finding on each of the factors. (MCR 6.106[F][2])

a. Defendant's prior criminal record, including juvenile offenses.

b. Defendant's record of appearance or nonappearance at court proceedings, or flight to avoid prosecution.

c. Defendant's history of substance abuse or addiction.

d. Defendant's mental condition, including character and reputation for dangerousness.

e. The seriousness of the offense charged, the presence or absence of threats, and the probability of conviction and likely sentence.

f. Defendant's employment status and history, and financial history insofar as these factors relate to the ability to post money bail.

g. The availability of responsible members of the community who would vouch for or monitor the defendant.

h. Facts indicating the defendant's ties to the community, including family ties and relationships, and length of residence.

i. Any other factors bearing on the risk of nonappearance or danger to the public.

B. Conditions of Release

Conditions can be placed on any type of bond in an effort to ensure the defendant's appearance. The nature of the allowable conditions that can be placed on a bond also suggests that objectives concerning the safety of victims or the community in general can be considered.

1. Personal Recognizance

MCR 6.106(C) sets forth the conditions of a personal recognizance bond. These conditions are that the defendant:

a. will appear as required,

b. will not leave the state without permission of the court, and

c. will not commit any crime while released.

2. Conditional Release

If the court determines that a release on personal recognizance will not reasonably ensure the appearance of the defendant and the safety of the public, the court may order pretrial release on the condition or combination of conditions that the court determines appropriate according to MCR 6.106(D). These conditions include:

1) the defendant will appear as required, will not leave the state without permission of the court, and will not commit any crime while released.

The court may also require the defendant to:

1) make reports to a court agency, as specified by the court or the agency,

2) not use alcohol nor illicitly use any controlled substance,

3) participate in a substance abuse testing or monitoring program,

4) participate in a specified treatment program for any physical or mental condition, including substance abuse,

5) comply with restrictions on personal associations, place of residence, place of employment, or travel,

6) surrender driver's license or passport,

7) comply with a specified curfew,

8) continue to seek employment,

9) continue or begin an educational program,

10) remain in the custody of a responsible member of the community who agrees to monitor the defendant and report any violation of any release condition to the court,

11) not possess a firearm or other dangerous weapon,

12) not enter specified premises or areas and not assault, beat, molest, or wound a named person or persons,

13) satisfy an injunctive order made a condition of release, or

14) comply with any other condition, including the requirement of money bail as described in MCR 6.106(E), reasonably necessary to ensure the defendant's appearance and the safety of the public.

3. Money Bail

If the court determines for reasons stated on the record that the defendant's appearance and the safety of the public cannot be assured, money bail with or without the conditions set forth in MCR 6.106(D) may be required. As specified in MCR 6.106(E), the court may require the defendant to post a bond that is executed, at the defendant's option, by either a surety approved by the court, or by the defendant or another who is not a licensed surety. If the defendant opts for a bond without a surety, it must be secured by either a cash deposit or its equivalent for the full bond amount, a cash deposit of 10 percent of the bond amount, or real property. The court has the option whether to offer the 10 percent bond.

4. Alternative Bond Documents

Courts may require or receive alternative documents in lieu of a cash, percent, or surety bond. Receipt of such documents must be documented in the case file. If the court determines that the document should be kept in a location for safe keeping other than the court file, the location of the document should be noted on the register of action. If the case is transferred to another court, such as a bind over to circuit court or a change of venue, the document should be included in the itemization of materials transferred.

a. Driver's License. Law enforcement or the court may require a person to surrender a driver's license as security for the defendant's appearance in court. Upon conclusion of the trial or imposition of sentence, as applicable, the court shall return the license to the defendant unless other disposition of the license is authorized by law. (MCL 257.749, MCL 780.64, MCR 6.106[D][2][f])

b. Guaranteed Appearance Certificate. In lieu of a driver's license, a person may leave a guaranteed appearance certificate with the law enforcement officer or the court. The certificate must contain a printed statement that a surety company authorized to do business in Michigan guarantees the appearance of the person whose signature appears on the card or certificate, and that if the defendant fails to appear in court, the company will pay any fine, costs, or bond forfeiture imposed on the person not to exceed $200.00. Upon conclusion of the trial or imposition of sentence, as applicable, the court shall return the certificate to the defendant. (MCL 257.749)

c. Passport. As a condition of bond, the court may require surrender of a passport. A person without a passport might surrender a refugee travel document, which can serve in lieu of a national passport. It may be useful to acquire signature of the owner of the passport or travel document upon return as receipt. Expired passports or travel documents and notification of conviction should be sent to US Immigration, Investigations Bureau, 333 Mt. Elliott Street, Detroit, MI 48207-4381. For further information, contact US Immigration at 313-568-6036. (MCR 6.106[D][2][f])

5. LEIN Entry

If the court orders a bond with conditions that are determined to be reasonably necessary for the protection of any person, the Order for Pretrial Release/Custody (SCAO-Approved form MC 240) must be sent to the local law enforcement authority for entry into the LEIN system. (MCL 765.6b) The court must order cancellation of the bond conditions from LEIN when the bond is revoked or otherwise terminated.

6. Bond Form

SCAO-Approved form MC 241, Bond, should be completed in conjunction with the release order, SCAO-Approved form MC 240, Order for Pretrial Release/Custody. See the Section 2 Appendix for copies of the forms.

C. Crime Victim's Rights

The victim of a crime will be given notice that he or she may contact the sheriff to determine whether a defendant has been released from custody pending trial. (MCL 780.755, MCL 780.815)

If the victim wishes not to have contact with the defendant, the arraigning judge/district court magistrate can order a no-contact clause in the defendant's bond as a condition of pretrial release. If contact was made by the defendant, the prosecuting attorney may file a petition for bond revocation. A no-contact order as condition of release might contain language ordering the defendant to: (1) refrain from making any contact with the victim in person, by mail, by telephone, or through a third party, or (2) leave the home if the parties are living together. If the defendant cannot leave the residence for some reason, the bond should contain a warning that any future charges or noncompliance with the conditions of bond could jeopardize his or her liberty. (MCL 765.6b, MCR 6.106[D][2])

If the defendant is charged with a crime involving domestic violence, the arraigning judge/district court magistrate may order the defendant to carry or wear a global positioning system (GPS) device as a condition of release. The judge/district court magistrate also may, with the victim's informed consent, order the defendant to provide the victim with an electronic receptor device capable of receiving the GPS information from the defendant's device. If the judge/district court magistrate orders the GPS device, he or she must also order the defendant not to purchase or possess a firearm. (MCL 765.6b)

APPENDIX 2

Order for Pretrial Release/Custody (MC 240)

Bond (MC 241)

Order Extending Bond for Protection of Named Person(s) (MC 240a)

Removal of Entry from LEIN (MC 239)

Court-Appointed Attorney

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3-01 DEFENDANT'S RIGHT TO COURT-APPOINTED ATTORNEY

A. Authority

At the arraignment on the warrant or complaint, the court must advise the defendant of the right to a court-appointed attorney at all subsequent court proceedings if he or she wants one and is unable to pay for one. (MCL 775.16, MCR 6.005[A])

B. When Entitled

1. Pretrial Proceedings

a. Felony Cases

Even if a defendant waives the assistance of an attorney, the record of each subsequent proceeding (such as the preliminary examination, arraignment, revocation proceedings, hearings, trial, or sentencing) must affirmatively show that the court advised the defendant of the right to an attorney and the defendant waived that right. Before the court begins such proceedings, the defendant must reaffirm that an attorney is not wanted, or if the defendant requests an attorney and is unable to pay for one, the court must appoint one, or if the defendant wants to hire an attorney and has the financial ability to do so, the court must allow the defendant a reasonable opportunity to retain one. (MCR 6.005[E])

At the arraignment on the warrant or complaint, the court must advise the defendant of the right to a court-appointed attorney if he or she does not have the money to hire one. The court must also advise the defendant of the right to an attorney at all subsequent court proceedings and, if appropriate, appoint one. (MCR 6.104[E], MCR 6.610[H])

b. Misdemeanor Cases

At the arraignment on the warrant or complaint, the court must advise the defendant of the right to a court-appointed attorney if he or she does not have the money to hire one and if:

1) the offense charged requires on conviction a minimum term in jail, or

2) the court determines that it might sentence the defendant to jail. (MCR 6.610[D] and [E], AO 2003-3)

2. Postsentencing Proceedings

a. Probation Violation

At the arraignment on an alleged probation violation, the court must advise the probationer that he or she is entitled to the assistance of a court-appointed attorney at the hearing and at all subsequent court proceedings, and that one will be appointed if he or she is unable to pay for one. (MCR 6.445[B]) Even if a probationer charged with probation violation waives the assistance of an attorney, at each subsequent proceeding the court must comply with the advice and waiver procedure in MCR 6.005(E). (MCR 6.445[D])

b. Postappeal Relief

If the court imposed a sentence of incarceration on a misdemeanor in district court, even if the incarceration is suspended and if the defendant is indigent, the court must enter an order appointing a lawyer if, within 14 days after sentencing, the defendant files a request for a lawyer or makes a request on the record. (MCR 6.625[B])

3-02 INVESTIGATION TO DETERMINE INDIGENCY

A. Role of Judge

In all Michigan courts, the final decision to provide counsel for an indigent defendant lies with the judge having jurisdiction in the pending case. In some courts, the presiding judge will make a determination of indigency and, based upon information provided, appoint an attorney to represent a defendant. If the court determines the defendant is financially unable to retain counsel, it must promptly appoint an attorney and notify that attorney of the appointment. The court may not permit the defendant to waive the right to be represented without first:

1. advising the defendant of the charge, the maximum possible incarceration for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation, and

2. offering the defendant the opportunity to consult an attorney. (MCR 6.005[D])

B. Role of Court Staff

Some courts refer a defendant to an investigator who will examine and verify information contained in a petition for a court-appointed attorney. A recommendation for or against appointment of counsel is then provided to the judge.

3-03 APPLICATION FOR INDIGENCY

A. Authority

If the defendant requests an attorney and claims financial inability to retain one, the court must determine whether the defendant is indigent. (MCR 6.005[B], *People v Studaker*, 387 Mich 698; 199 NW2d 177 [1972]) The appointment of counsel must be consistent with an adopted local administrative order that governs the process for selecting and appointing attorneys to represent indigent defendants. (MCR 8.123[B])

B. Process

The process for determining indigency is in MCR 6.005(B). These factors are a guide for determining indigency and are the minimum amount of information necessary to make an informed decision on the question of indigency. Every court shall require a defendant claiming indigency to submit a sworn statement setting forth his or her financial condition. The following factors shall be considered:

1. the defendant's present assets, employment, earning capacity, and living expenses,

2. the defendant's outstanding debts and liabilities, secured and unsecured,

3. whether defendant has qualified for and is receiving any form of public assistance,

4. availability of any personal or real property owned and whether it would cause undue financial hardship to the defendant or dependents if converted,

5. whether the defendant is incarcerated, and

6. any other circumstances that would impair the ability to pay an attorney fee as would ordinarily be required to retain competent counsel.

C. SCAO-Approved Forms

The Request for Court-Appointed Attorney and Order (MC 222) can be completed by an indigent defendant to request a court-appointed attorney. See the Section 3 Appendix for a copy of the form.

3-04 RECOVERING EXPENSE

A. Authority

1. Reimbursement After Sentencing

The authority for recovering costs is in MCL 769.1k, MCL 769.3, and MCL 771.3.

Pursuant to MCL 769.1k, if a defendant is found guilty or pleads guilty or nolo contendere, at sentencing the court may order the expenses of providing legal assistance to the defendant. These costs may also be ordered for defendants subject to a deferred judgment of guilt or delayed sentence.

Pursuant to MCL 769.3, costs of prosecution can be ordered as a condition of sentence only if the offense is punishable by either fine or imprisonment. If a charge is punishable only by imprisonment, costs cannot be imposed. (*People v Tims*, 127 Mich App 564; 339 NW2d 488 [1983])

Pursuant to MCL 771.3, costs are authorized as a condition of probation only. In addition, costs as a condition of probation are limited by the defendant's ability to pay, if the defendant raises the issue. (*People v Music*, 428 Mich 356; 408 NW2d 795 [1987])

According to *People v Neil*, 99 Mich App 677; 299 NW2d 23 (1980), a term or condition of a sentence not expressly authorized by statute is unlawful and must be vacated. If a defendant is acquitted of the charges, reimbursement for court-appointed attorney fees should not be ordered.

Whenever a trial court attempts to enforce a fee for a court-appointed attorney, the defendant must be given an opportunity to contest the enforcement on the basis of his or her indigency and the trial court must assess the defendant's ability to pay. The court should consider whether the defendant is indigent and unable to pay at that time or whether forced payment would cause a manifest hardship on the defendant or the defendant's family at that time. (*People v Jackson*, 483 Mich 271; 769 NW2d 630 [2009])

2. Contribution Before Sentencing

In criminal cases, as specified in MCR 6.005(C), the court can order a partially-indigent defendant to contribute toward the costs of defense under a specific plan. The purpose of MCR 6.005(C) is not to authorize reimbursement, but to ensure the defendant is not denied

the appointment of an attorney because of partial "ability to pay."

B. Condition of Probation

Payment of costs as a condition of probation is seen as reimbursement to the public and not as punishment. (*People v Teasdale*, 335 Mich 1, 5-6; 55 NW2d 149 [1952]) Therefore, statute allows a judge, without a hearing, to set an amount reflecting the costs "reasonably related to the expense of the prosecution." (*People v Blanchura*, 81 Mich App 399, 404; 265 NW2d 348 [1978])

Probation may not be revoked for failure to pay costs if the reason for nonpayment is the defendant's indigency. (*People v Terminelli*, 68 Mich App 635; 243 NW2d 703 [1976], *People v Lemon*, 80 Mich App 737; 265 NW2d 31 [1978])

The court may continue collecting unpaid fines, costs, and other fees once the probationer is discharged or the probation is revoked. (MCL 769.1k)

See also Section 6-10 for details.

APPENDIX 3

Request for Court-Appointed Attorney and Order (MC 222)

Presentence Investigation

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4-01 AUTHORITY AND RESPONSIBILITY

A. Misdemeanor Cases

As directed by the sentencing judge or district court magistrate, a probation officer must conduct a presentence investigation and prepare a report on persons charged with and convicted of a misdemeanor. (MCL 771.14) In deciding whether to order a report, the court may follow standards which suggest that a presentence report be prepared in misdemeanor cases involving a minor or first offender or when incarceration is a possible sentence. See *Criminal Justice Goals and Standards for the State of Michigan*, Standard 64.20.

The defendant in a misdemeanor case may request the preparation of a presentence report. While the sentencing judge has a right to deny a defendant's request for a presentence report in a misdemeanor conviction, there should be a good reason for doing so. Sentencing is of such obvious importance to the criminal justice system that no trial judge, without a clear exposition of his discretionary thinking, should deny a defendant a presentence report and proceed to impose a maximum sentence. Such an act is tantamount to saying that nothing the court can learn from the presentence report can help the defendant. (*People v Shackelford*, 146 Mich App 330; 379 NW2d 487 [1985])

B. Responsibility of Probation Officer

1. Statutory Requirements

Pursuant to MCL 771.14, the probation officer must inquire into the antecedents, character, and circumstances of the defendant and shall report in writing to the court. The presentence investigation report must include:

a. an evaluation of and a prognosis for the person's adjustment in the community based on factual information contained in the report,

b. if requested by a victim, any written impact statement submitted by the victim pursuant to the Crime Victim's Rights Act,

c. a statement prepared by the prosecuting attorney as to whether any consecutive sentencing is required as authorized by law,

d. if a person is to be sentenced for a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance, a statement that the person is licensed or registered pursuant to article 15 of the Public Health Code, MCL 333.1610-333.18838, if applicable, and

e. diagnostic opinions that are available and not exempt from disclosure pursuant to MCL 771.14(3).

2. Michigan Court Rule Requirements

No court rule establishes requirements for an investigation into a defendant's background and character or a written report to the court. However, at the direction of the district court judge, the probation officer may refer to MCR 6.425 for guidance. If a report is produced, it may include:

a. a description of the defendant's prior criminal convictions and juvenile adjudications,

b. a complete description of the offense and the circumstances surrounding it,

c. a brief description of the defendant's vocational background and work history, including military record and present employment status,

d. a brief social history of the defendant, including marital status, financial status, length of residence in the community, educational background, and other pertinent data,

e. the defendant's medical history, substance abuse history, if any, and if indicated, a current psychological or psychiatric report,

f. information concerning the financial, social, psychological, or physical harm suffered by any victim of the offense, including the restitution needs of the victim,

g. if provided and requested by the victim, a written victim's impact statement as provided by law,

h. any statement the defendant wishes to make,

i. a statement prepared by the prosecutor on the applicability of any consecutive sentencing provision,

j. an evaluation of and prognosis for the defendant's adjustment in the community based on factual information in the report,

k. a specific recommendation for disposition, and

l. any other information that may aid the court in sentencing.

C. Referral to Probation Department

1. Procedure

After a defendant pleads guilty to a charge or is found guilty by court or jury trial, the judge may refer the defendant to the probation department for an investigation and report prior to sentencing. The sentence date may or may not be set prior to this referral. An appointment for the presentence interview is usually set at this time. All referrals from the court to the probation department should be made in writing. All referrals are forwarded to the probation department and may contain a number of categories, such as:

a. bond investigation report.

b. court-appointed attorney investigation report.

c. full investigation report.

d. abbreviated presentence investigation report.

e. oral report.

f. alcohol evaluation.

2. Basic Information Sheet

Upon initial contact with the probation department, the defendant will be asked to fill out a basic information sheet (BIS). See sample forms in the Section 4 Appendix. This form is the backbone of subsequent reports.

a. Primary Contents

The BIS should include the following:

1) identification data.

2) family history.

3) marital history.

4) education history.

5) employment history.

6) economic data.

7) military record.

8) health history.

9) substance abuse/use and any mental health history.

10) arrest record, including any prior or pending cases (nonpublic record, see Section 8, page 8-02-01).

11) additional information deemed relevant by the probation officer or the defendant.

b. Additional Information

The BIS should be kept up-to-date during the course of the investigation. Any changes in address, phone number, employment, etc., should be included.

The defendant's version of the offense should be included in either the BIS or the record of an interview. Court information, such as court actions, dates, and dispositions, should be recorded on a separate sheet completed by the probation department after the initial contact with the defendant. This information should also be kept up-to-date.

c. Completing the BIS

The BIS should be completed whenever possible by the defendant prior to the interview. The probation officer may need to offer assistance. If, at the time of referral or during the interview, the defendant indicates that he or she is currently, or has recently been, in some type of treatment, the probation officer should have the defendant sign a release of information form. See sample forms in the Section 4 Appendix. This release gives the probation officer authority to verify the defendant's attendance in treatment before the sentencing date.

D. Sex Offenders Registration

1. Authority

After a defendant pleads guilty or is found guilty, or has been assigned to youthful trainee status (YTA) for any violation listed below, the defendant must register with the Department of State Police. (MCL 28.722 *et seq*.)

2. Definition

Cases involving individuals who are determined to be tier I, II, or III offenders as defined in MCL 28.722, with some exceptions. The specific tier I misdemeanor offenses are:

750.335a(2)(b)	Attempted indecent exposure involving fondling, if victim is a minor
750.520e	Attempted criminal sexual conduct, fourth degree, if victim is age 18 or older

Also included as a tier I offense is a violation of any state law or local ordinance other than a tier II or tier III offense that, by its nature, constitutes a sexual offense against an individual who is a minor. (MCL 28.722[s]) An offender registered solely because of a single tier I conviction will only be listed on the law enforcement database; he or she will not appear on the public Internet website. (MCL 28.728[1], MCL 28.728[4][c])

3. Reporting Requirements

Registration must be completed before sentencing, entry of the order of disposition, or assignment to youthful trainee status. Tier I offenders must report annually thereafter (no earlier than the 1st and no later than the 15th of every January) for 15 years. Tier II offenders must report biannually thereafter (no earlier than the 1st and no later than the 15th of every January and July) for 25 years. Tier III offenders must report quarterly thereafter (no earlier than the 1st and no later than the 15th of every January, April, July, and October) for life.

4. How to Report

Courts with direct access to LEIN may enter the registration directly. Courts without LEIN access shall send the registration form to the local law enforcement agency or the local Michigan State Police post. A copy of the form shall be given to the defendant.

5. Change of Address

Once registered, pursuant to MCL 28.725 the registrant must notify the registering authority within three business days after any of the following:

- The offender changes or vacates his or her residence or domicile.
- The offender changes or discontinues his or her employment.
- The offender enrolls as a student or discontinues his or her enrollment as a student at an institution of higher learning.
- The offender changes his or her name.
- The offender plans to temporarily stay for more than seven days at a place other than his or her residence.
- The offender establishes an electronic mail address, instant messaging address, or any other designations used in Internet communication or posting.
- The offender buys any vehicle, begins to regularly operate any vehicle, or discontinues ownership or operation of the vehicle.
- The offender, who is enrolled as a student at an institution of higher education, is present at another location in Michigan, or in another state or in a United States territory or possession, or he or she discontinues studies at that location.

While on probation, the registrant may be provided a change of address form by the probation officer; however, it is the registrant's responsibility to notify the local law enforcement agency in which the new address is located. Courts with LEIN access will have the ability to enter the address change.

E. Protection Against Possible Exposure to HIV, HBV, and HCV

Since the probation officer will be meeting with the defendant to gather presentence information, the probation officer could possibly contract an infection from the defendant. Pursuant to the same statutes that require the court to order human immunodeficiency virus (HIV) testing for defendants charged with certain crimes, there are provisions for certain professionals who may be exposed to an infection as a result of their work with an infected person.

If a county employee or court employee who, while performing his or her official duties or otherwise performing the duties of his or her employment, determines that he or she has sustained a percutaneous, mucous membrane, or open wound exposure to the blood or body fluids of an arrestee or probationer may request that the arrestee or probationer be tested for HIV infection, HBV infection, or HCV infection pursuant to MCL 333.5204 only if he or she has received training in the transmission of bloodborne diseases under the rules governing exposure to bloodborne diseases in the workplace promulgated by the occupational health standards commission or incorporated by reference under the Michigan Occupational Safety and Health Act, MCL 408.1001-408.1094. For details on procedure, see Section 7-09.

4-02 TYPES AND CONTENTS OF PRESENTENCE INVESTIGATION REPORTS

A. Full Presentence Investigation Report

The full investigation report is a complete investigation of the defendant's background. All records such as police, medical, work, school, etc., will be included and verified in addition to releases of information. The probation officer will include his or her evaluation, plan, program, and sentence recommendation. The four sections in a full investigation report are: (1) defendant's interview, (2) investigation, (3) evaluation, and (4) sentence recommendation.

1. The Interview

The interview is a face-to-face meeting between the defendant and the presentence investigator. At this time, the BIS should be reviewed, clarifying all information and obtaining fuller responses, if necessary. Using the BIS as a guide, the investigator should develop a full history of the defendant's background, taking additional notes as necessary. The defendant's version of the incident should be included. The defendant is not entitled to have an attorney present at the interview. (*People v Daniels*, 149 Mich App 602 [1986], *People v Shively*, 45 Mich App 658 [1973], *People v Burton*, 44 Mich App 732 [1973])

2. The Investigation

a. The most important part of the investigation is to verify all statements made at the interview and all information on the BIS as fully as possible. The probation officer will decide whether to include or exclude any information necessary to determine the appropriate sentence. If appropriate, the probation officer should contact employers, schools, and medical and treatment facilities using the signed releases of information.

b. Police arrest records and driving records should be obtained.

c. The record should indicate whether the defendant was represented by an attorney in prior cases. According to *People v Miller*, 179 Mich App 466; 446 NW2d 294 (1989), "where it appeared that defendant had been represented by counsel on only one of his prior misdemeanors, the sentencing court erred by using the uncounselled offenses to enhance defendant's sentence. Defendant was entitled to resentencing with a corrected presentence report which omits the counselless convictions." (*Defender Sentencing Book*, Michigan State Appellate Defender's Office)

d. After completing the investigation, a written report should be submitted to the sentencing court. The written report should include the police version of the offense, the defendant's version, the victim's version, and the detailed background history of the defendant and the investigation. Any information which cannot be verified should be noted as such.

3. Evaluation, Plan, and Program

This section of the full investigation report is the presentence investigator's own assessment of the defendant. The investigator: (1) evaluates the data obtained in the interview and investigation, (2) formulates a plan of action for rehabilitating the defendant, and (3) determines a program for implementing the rehabilitation plan. These plans follow the previous sections of the written report and justify the final section, which is the sentence recommendation.

4. Sentence Recommendation

The last section of the presentence report is a sentence recommendation. There are a variety of sentencing options available to the court, but all include at least financial penalties, probation or jail. If probation is to be part of the sentence recommendation, any special clauses and terms of probation should be included. Either directly before or after the actual specific recommendation, a short explanation justifying the recommendation should be inserted. For details, see Section 6.

B. Abbreviated Presentence Investigation Report

1. General Contents

The abbreviated presentence report, which is usually a shortened form of the full investigation report, consists of the: (1) basic information sheet (BIS), (2) defendant's interview, and (3) written recommendation to the judge.

Because of high caseloads and time constraints, many courts have designed abbreviated presentence investigation reports to capture the most basic and pertinent information needed by the judge. Some examples of this wide variety of specially-designed report are in the Section 4 Appendix.

2. When Used

This report is generally used when: (1) time is limited, (2) a defendant has been on probation before and another more complete presentence investigation report is available for the probation officer's inspection, or (3) the judge is familiar with the defendant's background. It may also be used to determine if a defendant is to be assigned youthful trainee status, or if a judgment of guilt is to be deferred or a sentence is to be delayed.

3. Limitations

The judge should be made fully aware of the limitations of this type of report. A thorough investigation probably has not been conducted and not all information has been verified. There may be some records or reports that have not been obtained.

C. Oral Report

1. General Contents

An oral report is usually an informal request for information which is obtained from a brief interview with the defendant, followed by a check on the defendant's employment status, traffic and criminal records, ability to pay fines and costs, etc. The basic information sheet should be filled out, the defendant interviewed about the incident involved, and some points verified by telephone. If available, the arresting officer should be consulted. The defendant should be informed that sentencing will occur that day and the information requested is essential. The probation officer will present a summary of the information and make a verbal recommendation for sentencing.

2. When Used

The oral report is generally used when the judge intends to sentence a defendant the same day the oral report is requested.

3. Limitations

MCL 771.14 requires that a presentence investigation report contain a written recommendation for disposition. Since the presentence investigation report is not optional in felony cases, an oral report will never be ordered in these instances. However, since the sentencing judge has the option of ordering a presentence investigation report for misdemeanor cases, an oral report is permissible as an alternative.

D. Restitution

1. When Determined

If there was a victim in the case, restitution should be addressed during the time the probation officer is preparing the presentence report and determined prior to sentencing. The victim should be interviewed either by phone or in person, if requested. This will help determe the seriousness of the offense, and give another view of the defendant.

“Victim” is defined in MCL 780.826 and means an individual who suffers direct or

threatened physical, financial, or emotional harm as a result of the commission of a misdemeanor. In limited circumstances set forth in this section, a victim includes a sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical or financial harm as a result of a misdemeanor.

"Misdemeanor" is defined in MCL 780.826 and means a violation of a state law or a local ordinance that is punishable by imprisonment for not more than one year or a fine that is not a civil fine, but that is not a felony. Full restitution must be ordered to the victim or the victim's estate if a defendant is convicted of a misdemeanor, and for an offense that is resolved by assignment to youthful trainee status, by a delayed sentence or a deferred judgment of guilt, or in any other way that is not an acquittal or unconditional dismissal. See MCL 780.826(2), and an exception in (8). If the defendant is to be sentenced to jail as well as pay restitution, the commitment to jail should indicate the amount of restitution due so the sheriff can comply with MCL 780.830a, which allows a deduction of 50 percent of any amount over $50.00 received by the defendant while incarcerated to be paid toward restitution. The sheriff is required to notify both the defendant and the court in writing of all deductions and payments, with payment to the court once the accumulated deductions exceed $100.00.

2. Determining Validity and Amount

Restitution should not be on the probation order unless the amount is specific and has been verified by proof from medical bills, work loss statements from employers, repair bills, etc. Restitution may be ordered for the deductible amount in insurance paid losses. An insurance company requesting restitution should submit proof of payment. Restitution may be ordered in cases involving welfare fraud, Michigan Unemployment Insurance Agency fraud, and the Crime Victim Compensation Board. Proof of fraud or victim compensation amounts are readily verifiable.

3. Ordering Restitution After Sentencing

If sentence has already been passed when restitution amounts are determined, the probation order must be amended. It may be necessary to hold a hearing, with adequate proof verifying the amount, before a payment of restitution can be added to a probation order. The court may amend an order of restitution on a motion by the prosecuting attorney, the victim, or the defendant based on new information related to the injury, damages, or loss. (MCL 780.826[19])

An order of restitution remains in effect until satisfied in full. An order of restitution is a judgment and may be enforced by the prosecutor, victim, a victim's estate, or any other person or entity named in the order to receive restitution in the same manner as a judgment in a civil action, including a lien against all property of the defendant. (MCL 780.826[13])

The defendant must be ordered to make regularly-scheduled restitution payments. If two or more payments are missed, the court is required to order the defendant to execute a wage assignment to pay the restitution. (MCL 780.826[15]) Obtaining a completed wage assignment order at the time of sentencing may facilitate execution of the assignment as needed. The court may revoke probation if the person fails to comply with the order. However, the person may not be incarcerated for failure to pay restitution as ordered unless the court determines that the defendant has the resources to pay the ordered restitution and has not made a good-faith effort to do so. (MCL 780.826[14]) If a probationer is required to serve a jail term, the county sheriff may deduct 50 percent of any amount received by the defendant over $50.00 for payment of restitution. (MCL 780.830a)

E. Reimbursement for Emergency Response

Pursuant to MCL 769.1f, a person convicted of specified offenses shall reimburse a state or local unit of government for emergency response expenses. (Note: MCL 769.1f is amended, effective October 31, 2010.) Reimbursement shall be a condition of probation, but is not restitution and is not treated as restitution for purposes of priority of payment. (MCL 775.22)

1. When Determined

Reimbursement for emergency response should be addressed during the time the probation officer is preparing the presentence report and determined prior to sentencing.

2. Determining Validity and Amount

The expenses for which reimbursement may be ordered include salaries or wages, such as overtime pay, of law enforcement personnel, fire department, and emergency medical service personnel, including volunteers, the cost of medical supplies lost or expended by the fire department and emergency medical service personnel, the salaries, wages, or other compensation, including, but not limited to, overtime pay of prosecution personnel for time spent investigating and prosecuting the crime or crimes resulting in conviction, and the cost of extraditing a person from another state to this state.

A local unit of government may elect to be reimbursed for expenses pursuant to this section or a local ordinance, or a combination of this section and a local ordinance. A local unit of government may not be fully reimbursed more than once for any expense incurred by that local unit of government.

If police, fire department, or emergency medical service personnel from more than one unit of government incurred expenses as described in MCL 769.1f(2), the court may order the person convicted to reimburse each unit of government for the expenses it incurred.

3. Reimbursement as Condition of Probation

If the person convicted is placed on probation, any reimbursement ordered under this section shall be a condition of that probation.

4. Ordering Reimbursement After Sentencing

If sentence has already been passed when reimbursement amounts are determined, the probation order must be amended. It may be necessary to hold a hearing, with adequate proof verifying the amount, before a payment of reimbursement can be added to a probation order.

5. Enforcing Reimbursement

The court may revoke probation if the person fails to comply with the order and if the person has not made a good-faith effort to comply with the order. In determining whether to revoke probation, the court shall consider the person's employment status, earning ability, number of dependents and financial resources, the willfulness of the person's failure to pay, and any other special circumstances that may have a bearing on the person's ability to pay.

An order for reimbursement pursuant to this section may be enforced by the prosecuting attorney or the state or local unit of government named in the order to receive the reimbursement in the same manner as a judgment in a civil action.

A person shall not be jailed for a violation of probation for failure to make a reimbursement as ordered under this section unless the court determines that the person has the resources to pay the ordered reimbursement and has not made a good-faith effort to do so.

F. Reimbursement for Fines, Costs, and Statutory Assessments

1. When Determined

Reimbursement for fines, costs (including minimum state costs), and statutory assessments should be addressed when the probation officer is preparing the presentence report. Financial sanctions, including additional costs incurred in compelling the defendant’s appearance, may be ordered on a deferred judgment of guilt case or when a plea is entered and sentence is imposed or delayed. (MCL 769.1k) The crime victim assessment must be ordered on a deferred judgment of guilt case when the person is granted youthful trainee status, or when a plea is entered and sentence is imposed or delayed. (MCL 780.905)

2. Reimbursement as Condition of Probation

If the person convicted is placed on probation, any fines, costs, and assessments ordered under this section shall be a condition of that probation.

3. Enforcing Reimbursement

Payment of fines, costs (including minimum state costs), and other assessments contained in the order of probation may be enforced by a wage assignment. (MCL 771.3[2][f]) If the probationer is in prison, the court may submit an order to remit prisoner funds to the Michigan Department of Corrections. The Michigan Department of Corrections will deduct 50 percent of any amount a prisoner receives in a month that exceeds $50.00. (MCL 769.1l)

Fines, costs (including minimum state costs), and other assessments ordered may be collected at any time, regardless of whether the defendant is placed on probation, probation is revoked, or the defendant is discharged from probation. (MCL 769.1k)

4-03 INVESTIGATION

A. Constitutional Limitations

The United States Supreme Court and Michigan Supreme Court have found it essential that a sentence, and therefore a presentence report, be based on accurate information. (*Townsend v Burke*, 334 US 736; 68 SCt 1252; 92 LEd 1690 [1948], *People v Malkowski*, 385 Mich 244; 188 NW2d 559 [1971], *People v Gunter*, 76 Mich App 483; 257 NW2d 133 [1977])

1. Polygraph Test

Polygraph test results may not be included in a presentence report without the defendant's consent. (*People v Allen*, 49 Mich App 148; 211 NW2d 533 [1973], *People v Dockery*, 65 Mich App 600; 237 NW2d 575 [1975]) These cases state that a polygraph examination is not sufficiently accurate under due process to allow it to be imposed upon the defendant during sentencing in order to determine whether he or she is guilty of other criminal conduct.

In 1976 the Court of Appeals went even further and said there may be no mention at all of the polygraph test in a presentence report. (*People v Towns*, 69 Mich App 475; 245 NW2d 97 [1976]) It is improper for a judge to "broach the subject of polygraph examinations or induce defendant to take the examination for sentencing purposes." (*People v Towns*, supra)

2. Past Convictions

a. Violation of Right to Counsel

A sentence may not be influenced by a defendant's past convictions obtained in violation of the right to counsel. The United States Supreme Court has found this to be "misinformation of constitutional magnitude." (*United States v Tucker*, 404 US 443; 92 SCt 589; 30 LEd2d 592) When conducting a presentence investigation, a probation officer should ask a defendant if he or she had an attorney at the time of the plea(s) or trial(s) resulting in conviction and incarceration. The report should note any case in which the defendant apparently was unrepresented so the sentencing court may consider the constitutionality of the conviction(s) and decide whether the conviction(s) should be taken into account in the current sentencing proceeding.

b. Waiver of Right to Counsel

The Michigan Supreme Court has declared that a defendant who claims a denial of the right to counsel in a past conviction has a right to a hearing on that question. (*People v Moore*, 391 Mich 426; 216 NW2d 770 [1974], *People v Henry*, 395 Mich 367; 236 NW2d 489 [1975])

c. Convictions in Foreign Countries

In *People v Braithwaite*, 67 Mich App 121; 240 NW2d 293 (1976), the appellate panel stated that, in sentencing, a court may not consider a prior conviction of a defendant rendered in any foreign country. However, in *People v Galvan*, 226 Mich App 135, the Court of Appeals upheld the trial court's statement that "it doesn't make any difference where the conviction entered as long as that it comported with due process." In *People v Wallach*, 110 Mich App 37; 312 NW2d 387 (1981), the court held that the blanket prohibition of *Braithwaite* – that evidence of a conviction under Canadian law can never be permissible consideration in determining a sentence – should not be followed. In *Galvan*, the court agreed with *Wallach* that "the holding in *Braithwaite* is overbroad and should not be followed. For practical purposes, a trial court should have all relevant information before it to fashion an appropriate sentence. Convictions in other jurisdictions are a relevant consideration at sentencing and should be considered as long as the courts are convinced that the defendant was afforded due process in that system."

B. Importance of Relevancy and Reliability

1. When Preparing the Report for Sentencing

The presentence report must contain reliable information relevant to the defendant's character, attitude, and activities because it provides support for the judge's sentencing decision. The presentence investigator must seek reliable sources, verify information, and evaluate on the basis of experience, common sense, accuracy, and validity. According to case law, it is improper for a probation officer to inject personal opinion that the defendant is guilty of a charge where he or she has not been found guilty. (*People v Westerfield*, 71 Mich App 618; 248 NW2d 641 [1976], *People v Winhoven*, 65 Mich App 522; 237 NW2d 575 [1975])

2. When Using the Report at Sentencing

a. The sentence imposed by a judge must be based only upon knowledge or evaluation of the defendant. Therefore, a sentencing judge may not consider a personal impression that the defendant is protecting a codefendant or assume a defendant is guilty of other crimes based on hearsay or unsubstantiated reports. (*People v Anderson*, 391 Mich 419; 216 NW2d 780 [1974], *People v Davis*, 41 Mich App 683; 200 NW2d 779 [1972], *People v White*, 390 Mich 245; 212 NW2d 222 [1973])

b. A sentencing judge may not increase the defendant's sentence on the assumption that he has not fully confessed to the criminal behavior. If the defendant denies the offense, the sentencing judge has a duty to ascertain that the sentencing decision is not based upon false information. These limitations clearly control a presentence investigation as well.

C. Fundamental Elements to Consider During Investigation

1. Criminal History and Driving Records

In order to obtain an accurate, comprehensive evaluation of a defendant for sentencing purposes, the probation officer should include in the presentence investigation report the defendant's criminal record (if one), traffic history, the police report, the offender's version of the current offense, a victim summary statement, and any other pending charges or allegations of criminal conduct. Access to criminal history records and dissemination of information contained within the records is controlled by Law Enforcement Information Network (LEIN) Administrative Rules and federal regulations (Title 28 of the United States Code). The following are some guidelines and limitations regarding the inclusion of this information in the presentence report.

a. Any admissions a defendant makes to a probation officer regarding criminal conduct should be included in a presentence report. However, if these statements are later denied in court, a judge should not consider them as true in imposing sentence. (*People v Hildabridle*, 45 Mich App 93; 206 NW2d 216 [1973]) Pending charges and other allegations of criminal conduct may be included in the presentence report. However, if the defendant denies any allegations, the court may only consider them if presented with further information establishing their validity.

b. The Michigan Supreme Court in *People v McFarlin*, 389 Mich 557; 208 NW2d 504 (1973), made clear that a judge may consider a defendant's juvenile record in sentencing and that such records are often important in determining sentences. Probate courts (now family division of the circuit court pursuant to MCL 600.1021) and the Michigan Department of Human Services have a duty to provide information to the Department of Corrections about a defendant's prior record as a juvenile. (MCL 791.228) However, information in a juvenile record may be unreliable. The statute does not create a duty to report to a district court.

c. The defendant may object to consideration of prior felony, misdemeanor, or juvenile convictions obtained without counsel or a valid waiver. The defendant must present prima facie evidence that the prior conviction challenged is constitutionally invalid. This can be demonstrated by showing the judge’s register of actions entry or transcript that acknowledges an absence of counsel in the presentence report itself. The burden then shifts to the prosecution to show the constitutionality of the conviction. (*People v Moore*, 391 Mich 426; 216 NW2d 770 [1974]) See also *People v Carpentier*, 446 Mich 19, 29-30; 521 NW2d 195 (1994), *People v Zinn*, 217 Mich App 340; 551 NW2d 704 (1996).

d. If a defendant was previously sentenced pursuant to the Holmes Youthful Trainee Act (MCL 762.11 *et seq*.) or had a judgment of guilt deferred under the Substance Abuse Act (MCL 333.7411), the Spouse Abuse Act (MCL 769.4a), the Michigan Penal Code (MCL 750.430[8]), the Liquor Control Code (MCL 436.1703), health professional practicing under influence of drugs or alcohol (MCL 750.430), or the drug treatment court (MCL 600.1070), this information should also be included in the report, if available.

e. Pending but unadjudicated charges against a defendant may be included in the presentence report and considered in fixing sentence, so long as the fact of reliance upon them is placed on the record. (*People v Lee*, 391 Mich 618; 218 NW2d 655 [1974], *People v Pulley*, 66 Mich App 321; 239 NW2d 366 [1976], *People v Henry*, 395 Mich 367; 236 NW2d 489 [1975]) Pending charges, even those dropped pursuant to a plea bargain, may be considered by the sentencing court and may provide an accurate and adequate basis for imposing sentence. (*People v Moors*, 70 Mich App 210; 245 NW2d 569 [1976])

f. When a person has been convicted of domestic violence, or when a prior conviction of domestic violence is included in a criminal history record, federal law prohibits the person from possessing, carrying, or purchasing a firearm or ammunition. (18 USC 922[g][9])

The definition of domestic violence in the federal code includes all misdemeanor convictions that involve the use or attempted use of physical force or threat of use of a deadly weapon, by a current or former spouse, parent, or guardian of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian; or by a person similarly situated to a spouse, parent, or guardian of the victim. A person must have been represented by counsel or knowingly and intelligently waived the right to counsel, and same for jury. The presence of a conviction meeting these requirements would result in a condition of probation prohibiting the defendant from possessing, carrying, or purchasing a firearm or ammunition.

2. Psychiatric Reports

The Michigan Supreme Court has held that a psychiatric report from the Center for Forensic Psychiatry evaluating the defendant's present mental health is required before a guilty but mentally ill defendant may be sentenced. (*People v McLeod*, 407 Mich 632; 288 NW2d 909 [1980]) See also MCL 771.14(2)(g).

3. Privileged and Confidential Information Obtained from Professionals

The probation officer needs to know the rules of confidentiality when gathering privileged information for the presentence investigation report and how these rules pertain to the disclosure of that information once it is compiled in the report. The conversations between the probation officer and the defendant, while confidential, are not considered privileged and the conversations may be subject to disclosure. See Section 4-05 and Section 8 for more details on disclosure of confidential information.

A defendant interviewed during a presentence investigation must be informed that the law protects certain kinds of records kept by doctors, schools, accountants, etc., regarding whatever is pertinent. In order to compile a complete report to aid a judge in sentencing, access to this privileged information is important or even indispensable.

For more information on confidential relationships, see Section 1-03 and Section 4-03 below.

a. Seeking Privileged Information from Confidential Relationships

When privileged information is sought from someone who has a confidential relationship with the defendant, the probation officer needs permission to obtain the information. A defendant should be asked to sign a waiver giving confidential sources permission to release or disclose privileged information to the probation officer. A form for this should be developed in each probation department. Sample forms are in the Section 4 Appendix. The release form must specifically indicate the individual understands that he or she has the right to deny access to privileged information and that he or she knowingly relinquishes that right.

If privileged information is included in a report without a waiver, a defense attorney may be able to prevent a judge from considering the privileged information in sentencing based on the statute that grants the privilege barring its use.

Confidential relationships recognized by Michigan statute are numerous and, therefore, only the most common are listed below.

- Accountants (MCL 339.732)
- Attorneys (MCL 767.5a)
- Confessions to clergy (MCL 600.2156)
- Fiduciaries (MCL 700.1212)
- Husband and wife (MCL 600.2162)
- Marriage counselors (MCL 333.18117)
- Physicians (MCL 600.2157)
- Polygraphs (MCL 338.1728)

- Psychiatrists (*Morrisser v Brewer*, 408 US 471; 92 S Ct 2593; 33 L Ed 2d 484)
- Psychologists (MCL 333.18237)

Whenever information is required from any of the above sources, it is best to first check the statute to determine if a privilege is involved and, if so, whether a means for obtaining the information is provided, either through waiver or court order.

b. Exceptions to Release of Privileged Information

Sometimes privileged information cannot be released to the probation officer even with the consent of the individual concerned. This is because **privileges** exist without there being a confidential relationship as defined above. Generally these privileges protect government records pertaining to children, for example, adoptions, illegitimate births, and training school records. Because the government believes it would be harmful to both children as a class and the public if such information was available, the law usually does not allow disclosure, even if the person described in the records consents.

c. Access to Public Assistance Records

In order to determine a defendant's ability to pay fines, costs, and restitution, the probation officer will need to determine whether a defendant receives public assistance and the amount received. This information is open to inspection by officials in connection with their official acts according to MCL 400.64.

d. Freedom of Information Act

The Freedom of Information Act greatly facilitates the gathering of information from government agencies only (this does not apply to court records). This information is available to the general public. The statute provides that failure of a government agency employee to promptly furnish the information subjects that employee to immediate dismissal and is also a misdemeanor. (MCL 15.231)

4. Confidential Information Obtained from Defendant

There is a difference between privileged information and confidential information. The conversations between a probation officer and a defendant are considered confidential, but the defendant does not have the legal right to insist that information revealed in these conversations is privileged. The United States Supreme Court has confirmed that "privileged information" in a conversation between a probation officer and an offender is not protected, like a conversation between a lawyer and a client. (*Fare v Michael*, 442 US 707; 99 SCt 2560; 61 LEd2d 797 [1979])

Although the information revealed to the probation officer is not privileged, the relationship between the defendant and the probation officer should be based on mutual trust so that the defendant can be comfortable talking with the probation officer about personal problems. Assurances of confidentiality are one way to foster and gain trust in this relationship. While conversations between the probation officer and the defendant may be considered confidential in many situations, the probation officer must forego confidentiality if public safety is endangered.

If a probation officer makes a promise of confidentiality (implied or expressed), then any information acquired through further questioning may not be used in a violation or subsequent criminal proceeding. Otherwise, the information gathered can be used. For more details on the release of confidential information, see Sections 1-03, 4-05, and 8.

5. Blood Testing for HIV and Other Diseases

Human immunodeficiency virus (HIV) and other communicable diseases have had a significant impact on the criminal justice system. Probation officers may come in contact with persons who have communicable diseases. It is important to have knowledge of the following laws and their impact on the criminal justice system.

MCL 333.5131 and MCL 333.5133 state that all reports, records, and data pertaining to testing, care, treatment, reporting, and research associated with a communicable disease or infection are confidential. Any person who releases test results in compliance with the law is immune from civil or criminal liabilities or administrative penalties for the release of that information. The test results for the presence of a communicable disease or infection, and the fact that a test was ordered, are subject only to physician-patient privilege laws. See Section 6-01, page 6-01-05, for more information on the responsibilities of the court.

6. Fingerprinting

If proof does not exist that fingerprints were taken prior to the time of arraignment of a person on a complaint for a felony or a misdemeanor (punishable by imprisonment for more than 92 days), a district court magistrate or judge must order that fingerprints be taken. See SCAO-Approved form MC 233 in the Section 4 Appendix. The order will either: (1) order the person to submit himself or herself to the police agency that arrested the person or obtained the warrant for the arrest of the person so that the person's fingerprints can be taken, or (2) order the person committed to the custody of the sheriff for the taking of the fingerprints. (MCL 764.29)

Note: MCL 28.243 provides in subsection (3) that fingerprints are not required at arrest for violations of MCL 257.904(3)(a), or a local ordinance substantially corresponding to section 904(3)(a).

7. Assessments

Pursuant to MCL 257.625b(5), before imposing sentence for a violation of MCL 257.625(1), (3), (4), (5) (6), (7), or (8), or a local ordinance substantially corresponding to subsections (1), (3), (6), or (8), the court shall order the defendant to undergo screening and assessment by a person or agency designated by the Michigan Department of Community Health to determine whether he or she is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. Except as otherwise provided in MCL 257.625b(5), the court may order the defendant to participate in and successfully complete one or more appropriate rehabilitative programs. If the person has one or more prior convictions, the court shall order the person to participate in and successfully complete one or more appropriate rehabilitative programs as part of the sentence. The defendant shall pay the costs of the screening and rehabilitative services as part of the sentence. This assessment can be included as a portion of the presentence report. There are several screening and assessment tools that can be used for evaluation. See Section 5 for more information. There are assessment tools that can be used for crimes other than drunk driving, such as the Driver Risk Inventory (DRI), Shoplifters Anonymous, psychological evaluation, etc.

8. Crime Victim's Rights

Victims have certain rights established by Article I, Section 24 of the Michigan Constitution and the Crime Victim's Rights Act. There are certain actions that a presentence interviewer/probation officer should consider during investigation. (Const 1963, art 1, §24, MCL 780.824) A parent, guardian, or custodian of a minor victim or a victim who is mentally or emotionally unable to participate in the legal process may exercise the rights of the victim, unless the parent, guardian, or custodian is the defendant or is incarcerated.

a. Victim Impact Statement

Pursuant to MCL 780.823 and 780.824, the victim has the right to submit or make a written or oral impact statement to the probation officer for use by that officer in preparing a presentence investigation report concerning the defendant. The victim's written statement shall, upon the victim's request, be included in the presentence investigation report. A victim impact statement letter should be sent to and filled out by the victim(s) prior to a probation officer's interview. See also MCL 771.14(2)(b). Pursuant to MCR 6.425(A)(7) if provided and requested by the victim, a victim's written impact statement as provided by law shall be included for sentencing regarding information concerning the financial, social, psychological, or physical harm suffered by any victim of the offense, including the restitution needs of the victim. See sample form in the Section 4 Appendix.

b. Effect on Sentencing Recommendation

In determining a sentencing recommendation, the probation officer should assess the relationship of the victim and the defendant. If the victim wishes not to have contact with the defendant, the probation officer may include this as a recommended condition of probation.

c. Determining Restitution

During an investigation, it is essential to contact the victim and determine injuries or losses for which the victim may receive compensation. In determining restitution, the probation officer should refer to MCL 780.826.

For crimes resulting in physical or psychological injury, the following costs, whether incurred or reasonably expected to be incurred, may be included in the calculation of restitution:

1) medical services.
2) physical therapy and rehabilitation.
3) medical and psychological treatment for victim's family members.
4) homemaking and child-care expenses.
5) federal, state, and local tax deductions or credits which are lost due to the death of a victim, if the deceased victim could have been claimed as a dependent.

If homemaking or child-care services are provided without charge, restitution may include the amount which would be charged for those services in the area. (MCL 780.766[4][e], 780.794[4][e], 780.826[4][e])

Calculation of amounts not yet incurred but reasonably expected to be incurred will present challenges to probation officers. Simple scenarios, such as monthly counseling sessions which will last for a predetermined duration, will be relatively straightforward. But future expenses which may go on for an unknown period of time, or which may vary in amount over time, will be more complicated. Especially complex will be the value of tax benefits not realized, since the value of future deductions is dependent upon the future income of the parents or guardians.

In cases where costs will continue to accrue, courts should enter an order with a specific (even if estimated) amount of restitution. "Open" orders should not be entered. As costs continue to accrue, the restitution order should be amended, periodically if necessary, and always state a specific amount. Orders with estimated costs should be automatically calendared for future review.

In all cases, the court is obliged to order amounts which are "reasonably determined" or "reasonably expected to be incurred," despite the difficulty of calculating those amounts.

For crimes resulting in death or serious impairment of a body function, the court may order up to three times the amount otherwise allowed as restitution.
(MCL 780.766[5])

d. Notice to Prosecuting Official

Depending on local practice, after the defendant's arraignment the probation officer may be responsible for notifying the prosecuting official of the names and addresses of victims. (MCL 780.816) See SCAO-Approved form DC 255 in the Section 4 Appendix.

e. Confidentiality of Impact Statement

If a victim has requested his or her victim's impact statement be included in the presentence investigation report, it will be made available to the defendant unless exempted from disclosure by the court as specified by MCL 771.14(3) and MCR 6.425(B) and (C). See also Section 4-05. (MCL 780.823[1][e], MCL 780.824)

9. Medical Marihuana Use

Michigan voters approved the medical use of marihuana in November 2008. (MCL 333.26421-.26430) Persons using marihuana to alleviate a debilitating medical condition may obtain a physician certification and register with the Michigan Department of Community Health. The person is then issued a registry identification card. However, marihuana possession and use are still illegal under federal law. If it is determined during the presentence investigation that a defendant has been issued a registry identification card for this purpose, it must be made known, especially where a defendant is placed on probation with a condition of monitoring for drug use. See Sections 5-02 and 7-01.

10. Defendant's Statement

The probation officer should get a statement from the defendant as part of the presentence report. The statement may be either written or oral, depending on local practice. There are disadvantages and advantages to both. The presentence investigation report should inform the judge of any discrepancies between the defendant's statement and the police report.

D. Waiver of Updated Presentence Report at Resentencing

A defendant or prosecutor may waive the right to an updated presentence report at resentencing

when each believes the previously prepared report is accurate. (*People v Hemphill*, 439 Mich 576; 487 NW2d 152 [1992]) A defendant may waive preparation of an updated report at resentencing even though a previously prepared presentence report may contain inaccurate information. Basing a sentence on such information could jeopardize the sentencing unless updated.

4-04 PRESENTENCE REPORT

A. Purpose

After a defendant pleads guilty to a charge or is found guilty by the court or jury, the judge may refer the defendant to the probation department for an investigation and report prior to sentencing. The presentence report provides the sentencing judge with a recommended sentence supported by documentation which aids the judge in fashioning a just sentence.

B. Contents

MCL 771.14(2) specifies those components which must be included in all felony presentence reports and any misdemeanor presentence reports which have been requested by the court (two of the components apply only to felony cases). If the court has not requested the probation officer prepare a written report, these components, while not required, are highly recommended. Other recommended components are outlined in case law.

1. Required or Recommended Components of the Report

a. Components of the report established by MCL 771.14(2) include:

1) an evaluation of and a prognosis for the person's adjustment in the community based on factual information contained in the report,

2) if requested by a victim, any written impact statement submitted by the victim pursuant to MCL 780.823 and MCL 780.824,

3) a specific written recommendation for disposition based on the evaluation and other information as prescribed by the court,

4) a statement prepared by the prosecuting attorney as to whether any consecutive sentencing is required as authorized by law,

5) if a person is to be sentenced for a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance, a statement that the person is licensed or registered pursuant to article 15 of the Public Health Code, MCL 333.16101-333.18838, if applicable, and

6) diagnostic opinions that are available and not exempted from disclosure by MCL 771.14(3).

b. Components recognized in *People v Anderson*, 107 Mich App 62; 308 NW2d 662 (1982), include:

1) an objective description of the offense,
2) the defendant's version of the offense,
3) a full description of the defendant's prior criminal record,
4) the status of all criminal charges pending against the defendant, and
5) a personal profile of the defendant.

2. Optional

The presentence report may include:

a. the defendant's juvenile record if the record has not been expunged (*People v McFarlin*, 389 Mich 557; 208 NW2d 504 [1973]),

b. the conclusions or opinions of the probation officer (*People v Books*, 95 Mich App 500; 291 NW2d 94 [1980]), and

c. pending charges and prior arrests without convictions (*People v Lee*, 391 Mich 618; 218 NW2d 655 [1974]). With pending charges, the judge may not assume the defendant is guilty of charges of which the defendant is presumed to be innocent, if denied by the defendant. (*People v Grimmett*, 388 Mich 590; 202 NW2d 278 [1972]) (Nonpublic record, see Section 8, page 8-02-01.)

3. Prohibited

The presentence report shall not include any address or telephone number for the home, workplace, school, or place of worship of any victim or witness, or a family member of any victim or witness, unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual, or any other information prohibited from disclosure pursuant to the William Van Regenmorter Crime Victim Rights Act. (MCL 780.751 *et seq*., MCR 6.610[F][1][b])

4. Updating Reports

A presentence report must be current and updated. (*People v Triplett*, 407 Mich 510; 287 NW2d 165 [1980]) A report is deficient if it is so old that it does not reflect changed circumstances. (*People v Crook*, 123 Mich App 500; 333 NW2d 317 [1983]) The defendant is entitled to be sentenced on the basis of a presentence report prepared specifically for the

offense for which the defendant is being sentenced. (*People v Anderson*, 107 Mich App 62; 308 NW2d 662 [1981], *People v McKeever*, 123 Mich App 533; 332 NW2d 596 [1983]) If a complete report has been prepared within the past three years, that report may be submitted along with a supplemental report. (*Michigan Administrative Code*, Rule 791.9910[3] [1977]) Supplemental reports should reflect new information and relevant changes.

If, before sentencing, a presentence investigation report is amended by the supervisor of the probation officer who prepared the report or by another person with the authority to amend a presentence investigation report, the probation officer may request the court strike his or her name from the report and the court shall comply with that request. (MCL 771.14[4])

C. Sentence Recommendation

The presentence report must contain a specific sentence recommendation. (*People v Green*, 123 Mich App 563; 332 NW2d 610 [1983], MCL 771.14[2]) A simple recommendation of incarceration or that the defendant not be placed on probation is sufficient. (*People v Joseph*, 114 Mich App 70; 318 NW2d 609 [1982])

1. Sentencing Guidelines

Statutory sentencing guidelines apply only to felony offenses for which the penalty prescribed is an indeterminate sentence, and the sentencing court retains jurisdiction in imposing an offender's sentence.

2. Plea Agreement

The judge may not initiate or participate in discussions aimed at reaching a plea or sentence agreement. (*People v Briggs*, 94 Mich App 723; 290 NW2d 66 [1980], *People v Killebrew*, 416 Mich 189; 330 NW2d 834 [1982]) The judge also is not bound by defense-prosecution sentence bargains until they are accepted at sentencing. (*People v Ott*, 144 Mich App 76; 373 NW2d 694 [1985]) Sentence bargaining may result in a sentence agreement between the defendant and prosecutor that the defendant will plead guilty in exchange for: (1) a specific sentence disposition, or (2) a sentence recommendation by the prosecutor.

At the request of a party, a judge may state on the record the length of sentence that appears to be appropriate for the charged offense or a reduced charge offered by the prosecutor, based on the information then available to the judge. However, the judge is not bound by that preliminary evaluation and may later determine, based on additional facts that come to light, the sentence is inappropriate. A defendant who pleads guilty in reliance upon the judge's preliminary evaluation regarding sentence has an absolute right to withdraw the plea if the judge later determines that the sentence must exceed the preliminary evaluation. (*People v Cobbs*, 443 Mich 276; 505 NW2d 208 [1993])

3. Factors in Determining Sentence

In determining what sentence to impose, the following should be considered:

a. the possibility of reforming the defendant,

b. the protection of society,

c. the disciplining of the offender, and

d. the likelihood of deterring others from committing like offenses.

Although the sentence must be individualized, the judge should consider the sentences of similarly-situated defendants who have committed similar crimes, so as to avoid a "significantly disproportionate" sentence. (*People v Coles*, 417 Mich 523; 339 NW2d 440 [1983]) See Section 6-01 for more information on determining sentence.

D. Release of Privileged Information

See Section 1-03, Section 4-05, and Section 8.

4-05 DISCLOSING PRESENTENCE INVESTIGATION REPORT AND RELATED RECORDS

A. Authority

The presentence report must be disclosed prior to sentencing. (MCL 771.14[5], MCR 6.610[F][1][b])

B. Right to Access

The court must provide copies of the presentence report (if a presentence report was prepared) to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at a reasonable time, but not less than two business days before the day of sentencing. The prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, may retain a copy of the report or an amended report. If the presentence report is not made available at least two business days before the day of sentencing, the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, are entitled, on oral motion, to an adjournment to enable the moving party to review the presentence report and to prepare any necessary corrections, additions or deletions to present to the court, or otherwise advise the court of circumstances the prosecutor or defendant believes should be considered in imposing sentence. (MCL 771.14[5], MCR 6.610[F][1][b]) At the time of sentencing, either party may challenge, on the record, the accuracy or relevancy of any information in the presentence investigation report.

C. Records, Reports, and Case Histories

Statutes and court rules do not provide much guidance on the creation or distribution of a presentence report upon conviction of a misdemeanor or ordinance violation cognizable in the district court. Therefore, the information in this section is provided as guidance. Probation officers should seek specific direction from the judge.

1. Exemptions from Disclosure

Upon request, an address or telephone number that would reveal the location of a victim or witness or a family member of a victim or witness shall be exempted from disclosure unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual. (MCL 771.14[2], MCR 6.610[F][1][b])

The sentencing judge may exempt from disclosure to the defendant parts of the presentence report that might seriously disrupt a program of rehabilitation. The sentencing judge may

also exempt from disclosure sources of information that have been obtained on a promise of confidentiality. When a part of the report is not disclosed, the court must advise the defendant and the defendant's attorney that information has not been disclosed and state on the record the reason for nondisclosure. (MCL 771.14[3])

2. Disclosure of Presentence Investigation Report

a. Review by Parties

The court must provide copies of the presentence report to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at a reasonable time but not less than two business days before the day of sentencing. The prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, may retain a copy of the report or an amended report. If the presentence report is not made available to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at least two business days before the day of sentencing, the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, shall be entitled, on oral motion, to an adjournment to enable the moving party to review the presentence report and to prepare any necessary corrections, additions, or deletions to present to the court, or otherwise advise the court of circumstances the prosecutor or the defendant believes should be considered in imposing sentence. (MCL 771.14[7], MCR 6.610[F][1][b])

Upon request, an address or telephone number that would reveal the location of a victim or witness or a family member of a victim or witness shall be exempted from disclosure unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual.

b. Nondisclosure

Although MCR 6.425(B) does not apply to district court, it is a good practice to observe the restrictions in this rule. Therefore, when part of a presentence investigation report is not disclosed, the court should inform the parties that information has not been disclosed and state on the record the reasons for nondisclosure. To the extent it can do so without defeating the purpose of nondisclosure, the court should also provide the parties with a written or oral summary of the nondisclosure information and give them an opportunity to comment. The court's decision to exempt part of the report from disclosure is subject to appellate review.

3. Responsibility of Probation Officer

Probation officers have a dual responsibility of protecting the public and promoting the

rehabilitation of offenders. While the information which a probation officer has obtained and maintained in the probation file is confidential material, some materials may be released in certain instances. See Section 4-03, page 4-03-06.

The presentence investigation report contains numerous pieces of information about an offender's background, such as his or her education, social and medical history, and work experience. A probation file may also consist of other reports written by counselors, psychologists, and case workers. Therefore, a large amount of personal and confidential information is maintained by the probation officer that should not be disclosed arbitrarily.

a. Releasing Conviction Information on Defendant

When conviction information is a matter of **public record**, probation officers may disclose this information to noncriminal justice agencies or other persons as long as agency regulations are observed. **Information obtained via LEIN may not be disclosed to noncriminal justice agencies or persons.** Dissemination of criminal history record information (CHRI) obtained via LEIN is controlled by MCL 28.214, Criminal Justice Information Systems (CJIS) Policy Council Rules, and Chapter 1, Title 28 of the Code of Federal Regulations. Title 28 was developed to ensure the constitutional rights and privacy of individuals with CHRI, and to control the collection and dissemination of such information. Criminal Justice Information Systems (CJIS) Field Services is required by Title 28 to ensure that its requirements are satisfied by security standards. Misdemeanor and felony violations were created by 1998 PA 82 for disclosure of information from LEIN in a manner not authorized by law or rule.

Title 28 limits the dissemination of nonconviction data directly or through an intermediary to criminal justice agencies for criminal justice purposes or employment, or other individuals and agencies as authorized by statute, executive order, or court rule. LEIN administrative rule 28.6210 states that a user agency shall not disseminate criminal history record information received through LEIN to a private person. A private person may receive verbal information from a law enforcement agency as to whether or not a warrant ordering an arrest has been issued by a court and entered into either LEIN or National Crime Information Center (NCIC) files, if proper identification is provided.

b. Releasing Nonpublic Information

In providing required notice to victims, the probation officer may furnish information or records to victims that would otherwise be closed to public inspection. (MCL 780.752a, 780.781a, 780.811b)

c. Releasing Background Information on Defendant

Probation officers may also disclose an offender's background to criminal justice agencies on a need-to-know basis, provided the inquiry is related to an ongoing investigation. Courts generally base the decision to disclose information about an offender's background on the nature of the offender's crime and on the probation officer's opinion for potential harm.

d. Releasing Privileged Information

Privileged information gathered from confidential relationships as defined on page 4-03-04 is not open to public inspection. See Section 1-03 for more details.

e. Releasing Confidential Information

Confidential information gathered from the defendant as defined on page 4-03-06 is privileged only when given to the probation officer within the scope of the probation officer's statutory responsibility. (*People v Burton*, 74 Mich App 215; 253 NW2d 710 [1977])

D. Probationer's Statements

Any statements a defendant makes to a probation officer about criminal conduct should be included in the report. However, if these statements are later denied in court, a judge should not consider them true when imposing sentence. (*People v Hildabridle*, 45 Mich App 93; 206 NW2d 216 [1973]) See Section 4-03 for more information on the probationer's statements.

E. Crime Victim's Rights

1. Personal and Other Information

A presentence investigation report shall not include any address or telephone number for the home, workplace, school, or place of worship of any victim or witness, or a family member of any victim or witness, unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual, or any other information prohibited from disclosure pursuant to the William Van Regenmorter Crime Victim Rights Act. (MCL 780.751 *et seq*., MCR 6.610[F][1][b])

2. Victim Impact Statement

If a victim has requested his or her victim impact statement be included in the presentence investigation report, it will be made available to the defendant unless exempted from

disclosure by the court as specified in MCL 771.14(3). (MCL 780.823[1][e], MCL 780.824) See Section 4-03, page 4-03-08.

See also Section 1-03 and Section 8.

4-06 CHALLENGES TO INVESTIGATION AND REPORT

A. Authority

Any information contained in the presentence report may be challenged as inaccurate and irrelevant. (*People v Wilkins*, 121 Mich App 813; 329 NW2d 500 [1982], MCL 771.14[6])

B. What Can Be Challenged

Prior felony and misdemeanor convictions may be objected to as unconstitutionally obtained in violation of the right to counsel. (*People v Moore*, 391 Mich 426; 216 NW2d 770 [1974], *People v Schneider,* 132 Mich App 214; 347 NW2d 21 [1984]) Prior convictions may also be objected to as unconstitutionally obtained if the defendant was not advised of the right to a jury trial, right to confront his or her accusers and the right to remain silent. (*People v Crawford*, 417 Mich 607; 339 NW2d 630 [1983]) See also page 4-03-03.

See also Section 6, page 6-12-02.

4-07 IN-CHAMBER CONFERENCES

The judge may conduct in-chamber conferences. (*People v Pulley*, 411 Mich 523; 309 NW2d 170 [1981]) The judge may not confer ex parte with the prosecutor in the absence of defense counsel. (*People v Von Everett*, 110 Mich App 393; 313 NW2d 130 [1981]) The judge may confer with defense counsel in the absence of the defendant unless the defendant is prejudiced. (*People v Pulley*, supra)

Two judges may confer regarding a defendant whom both judges are going to sentence. (*People v Sexton*, 113 Mich App 145; 317 NW2d 323 [1982]) The judge may meet with the victim although the practice is "unwise." (*People v Rodriquez*, 124 Mich App 773; 335 NW2d 690 [1983])

The judge may meet with the probation officer outside the presence of defense counsel; however, counsel must have access to any information which was disclosed at that conference. (*People v Thompson*, 423 Mich 427; 378 NW2d 384 [1985], *People v Beal*, 104 Mich App 159; 304 NW2d 513 [1980], *People v Mills*, 145 Mich App 126; 377 NW2d 361 [1985])

4-08 SUGGESTED INTERNAL PROCEDURES

The presentence interview should include relevant questions, moving from general to more specific areas of inquiry. Asking open-ended questions helps gain more insight into the defendant's character and behavior. The interview should also be conducted in a nonjudgmental manner with persistence and directness on the part of the probation officer. The basic procedure in the investigation prior to meeting with the defendant is to:

- create a file on the defendant,
- obtain a police report,
- review the basic information sheet (BIS),
- read the register of actions,
- check the local criminal record/index (automated or manual alphabetical),
- check the juvenile records,
- review the traffic and criminal histories,
- compile all information to begin basis for presentence investigation report, and
- obtain a victim impact statement, if applicable.

APPENDIX 4

Referral to Probation

Basic Information Sheet (BIS)

Release of Information Forms

Abbreviated Presentence Investigation Report

Order for Fingerprints (MC 233)

Victim Impact Statement

Notice to Prosecuting Official (DC 255)

Motion and Summons Regarding
Probation Violation (MC 246)

Financial Statement (MC 287)

Substance Abuse Screening/Assessment

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Substance Abuse Screening/Assessment

5-01 INTRODUCTION

A. Authority

District court probation officers are authorized to conduct substance abuse assessments pursuant to MCL 257.625b(5) if the court is licensed as a designated screening and assessment agency with the Michigan Department of Community Health. See "Licensing" below.

B. Purpose

Screening and assessment may include interviews, assessment instruments and other diagnostic information. The object of screening and assessment is to determine whether the offender is likely to benefit from rehabilitative services, including alcohol or drug education/treatment programs. See also Section 4, Presentence Investigation.

C. Licensing

In order for a district court to be licensed for screening and assessment, it must apply to the Michigan Department of Community Health (http://www.michigan.gov/mdch). Courts that have their applications approved will be assigned a designated license number.

Substance abuse regional coordinating agencies will assist in completing applications. See the Section 5 Appendix for the license application, along with a list of regional coordinating agencies.

D. Role of Probation Officer

The role of a probation officer who is qualified to conduct screening and assessment is to determine whether a person will benefit from rehabilitative services, including alcohol or drug education/treatment programs. Before the sentencing date of a probationer, the probation officer recommends to the sentencing judge a course of action to be followed. Probation officers do not perform clinical diagnosis or develop treatment plans.

5-02 REFERRAL AND SCREENING

A. Order for Evaluation

The order for evaluation is issued by the sentencing judge at the time of conviction. A copy of SCAO-Approved form MC 211 is in the Section 5 Appendix. When a defendant enters a plea of guilty to a charge for: (1) operating a vehicle while intoxicated (OWI), (2) operating a vehicle or water vessel while visibly impaired (OWVI), (3) person under 21 operating a vehicle with any bodily alcohol content, (4) operating a vehicle with presence of drugs in body (OWPD), (5) operating a vehicle OWI, OWVI, OWPD with occupant under 16 in vehicle, (6) operating a water vessel with a blood alcohol content of .10 percent or more, or (7) operating a water vessel while under the influence of intoxicating liquor or a controlled substance or both, the judge is required to order screening and assessment or a substance abuse evaluation. Court staff such as a court clerk, probation clerk, or probation officer should then complete the order for evaluation form, scheduling the screening and/or assessment. The defendant signs the order and is provided a copy.

NOTE: Michigan voters approved the medical use of marihuana in November 2008. (MCL 333.26421-.26430; Michigan Administrative Code R333.101-.133) Persons using marihuana to alleviate a debilitating medical condition may obtain a physician certification and register with the Michigan Department of Community Health. The person is then issued a registry identification card. However, marihuana possession and use are still illegal under federal law. If it was determined during the presentence investigation that a defendant has been issued a registry identification card for this purpose, this fact should be included in an order for substance abuse screening and the subsequent report. See also Sections 4-03 and 7-01.

B. Court Screening

Court screening is performed by designated court staff, such as a probation officer from the court's probation department. Some courts have their own assessment officers or a person under contract who conducts all screening and assessments for the court. Another term used to describe court screening is “in-house assessments.”

C. Community Screening

Community screening is performed by community agencies licensed by the Michigan Department of Community Health. Another term for community screening is "out-of-house assessments.” A list of community agencies is available through local substance abuse coordinating agencies.

D. Minimum Screening Criteria

Courts or probation departments requesting designation for screening and assessments are required to submit an application for a license with the substance abuse licensing section of

the Michigan Department of Community Health. See the Section 5 Appendix for details.

E. Screening and Assessment Instruments

There are several screening and assessment instruments available to the court and probation officers. The following instruments are currently recognized in the substance abuse field:

1. ADE Needs/Risk.

2. Addition Severity Index (ASI).

3. Michigan Alcohol Screening Test (MAST).

4. Driver Risk Inventory (DRI).

5. Alcohol Use Inventory (AUI).

6. Substance Abuse Subtle Screening Inventory (SASSI-3).

5-03 ASSESSMENT

A. Report of Substance Abuse Assessment

A report of substance abuse assessment (or a summary of the report on a copy of SCAO-Approved form MC 212, which is in the Section 5 Appendix) must be completed and available for the sentencing judge before sentencing on all OWI, OWPD, OWVI, and drunk boating and ORV offenses. Screening and assessment reports should include a recommendation which determines whether the individual assessed would benefit from rehabilitative services, including alcohol and drug education/treatment. As part of the sentence, the judge may order the person to participate in and successfully complete one or more appropriate rehabilitative programs, such as Victim Impact, Alcohol Highway Safety Education, out-patient, intensive out-patient, in-patient, or residential.

B. Costs

The sentenced person must pay all costs for screening/assessment and rehabilitative services. Courts can require a screening and assessment fee if screening and assessment is conducted by licensed court staff. Costs vary among courts, probation departments, and substance abuse agencies.

C. Confidentiality

1. Function

Information in the record of a person undergoing screening and assessment, additional counseling, or treatment for substance abuse and mental health problems is confidential. (MCL 330.1748, MCL 333.6111, MCL 333.6521) Confidentiality protects the individual from the release of unauthorized information. Individuals must sign a release of information or consent form authorizing the release of information specific to the court case. See the Section 5 Appendix for a sample form.

2. Release Form

The release must specify what information is authorized for release or the information cannot be released. Release forms should include the individual's full name, address, date of birth, the name of the agency and person conducting screening and assessment services, and specific dates of use.

3. Witness

The release must be dated and signed by both the individual and a witness. The witness is responsible for ensuring that a client is competent to give informed consent before signing the release. (R330.7003, R330.6013[5][a]-[c], Michigan Department of Mental Health Emergency Rules) If the witness does not feel the client is competent, see R330.6001(3) and (4). If a guardian signs for the individual, there must be a letter of authority on file.

4. Exceptions

Release forms are not necessary for licensed court staff to provide a copy of the assessment to the judge and for probation transfers.

APPENDIX 5

Order for Substance Abuse Evaluation (MC 211)

MDCH Application for Substance Abuse License,
Directions for Completing Application, and
List of Regional Substance Abuse Coordinating Agencies

Summary of Substance Abuse Assessment Report (MC 212)

Certification to Department of State (Interlock Pilot Project)

Client Information Release Authorization

Sentencing

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6-01 DETERMINING SENTENCE

A. Proper Considerations

As a general rule, the sentencing judge has certain basic considerations, which include:

1. the possibility of reforming the individual,

2. the protection of society,

3. the disciplining of the offender, and

4. the likelihood of deterring others from committing like offenses.

Each sentence should be individualized, but should also reflect sentences for similar crimes. (*People v Coles*, 417 Mich 523; 339 NW2d 440 [1983]) See also Section 4-04.

B. Improper Considerations

As a general rule, the judge may not:

1. penalize the defendant for refusing to plead guilty.
(*People v Hogan*, 105 Mich App 473; 307 NW2d 72 [1981])

2. consider the defendant's refusal to admit guilt.
(*People v Yennior*, 399 Mich 892; 282 NW2d 920 [1977])

3. penalize the defendant for exercising the right to a trial.
(*People v Courts*, 401 Mich 57; 257 NW2d 101 [1977])

4. penalize the defendant for demanding a jury trial.
(*People v Earegood*, 383 Mich 82; 173 NW2d 205 [1970])

5. penalize the defendant for exercising the right against self-incrimination.
(*People v Anderson*, 391 Mich 419; 216 NW2d 780 [1974])

6. ask the defendant to take a polygraph, or to consider the results of a polygraph, unless the defendant freely consents. (*People v Allen*, 49 Mich App 148; 211 NW2d 533 [1973])

7. augment a sentence on the basis of a belief that the defendant lied under oath.
(*People v Anderson*, supra)

8. consider a prior felony or misdemeanor conviction if the conviction was obtained without the benefit of counsel or a valid waiver of counsel.
(*People v Moore*, 391 Mich 426; 216 NW2d 770 [1974])

9. consider prior convictions obtained in violation of the defendant's constitutional right to counsel. (*People v Moore*, supra)

10. consider prior guilty plea convictions obtained in violation of *Boykin v Alabama*, 395 US 238; 89 SCt 1709; 23 LEd2d 274 (1969), or *People v Jaworski*, 387 Mich 21; 194 NW2d 868 (1972).

11. impose a sentence that is premised on the basis of race, religion, or national origin.
(*People v Gjidodo*, 140 Mich App 294; 364 NW2d 698 [1985])

12. set a sentence in accord with any local sentencing policy, because a sentence must be individualized.
(*People v Chapa*, 407 Mich 309; 284 NW2d 340 [1979])

13. use speculative legislatively-authorized early release provisions, such as the Emergency Power Act, to justify augmenting a sentence.
(*People v Humble*, 146 Mich App 198; 379 NW2d 422 [1985])

14. consider the effect of disciplinary credits, which the defendant may or may not receive.
(*People v Stack*, 156 Mich App 564; 402 NW2d 7 [1986])

15. sentence in violation of public policy. In *People v Baum*, the court held that it violated public policy to require the defendant to remain out of state during the period of probation.
(*People v Baum*, 251 Mich 187; 231 NW 95 [1930])

C. Additional Considerations

1. Drunk-Driving Law

See the Criminal Sentencing/Administrative Consequences Chart in the Section 6 Appendix.

a. Trial Procedures

1) Time Lines for Case Processing of Misdemeanor

a) Except as otherwise stated in MCL 257.625b, the defendant must be arraigned within 14 days of arrest. (MCL 257.625b[1])

b) A pretrial must be held within 35 days, or 42 days in multi-county districts where there is only one judge. (MCL 257.625b[2]) Either side may have one 14-day adjournment. The defendant must attend the pretrial.

c) The case must be disposed of within 77 days of the date the issued or reissued arrest warrant is served, whichever is later. (MCL 257.625b[3]) "Final disposition" refers to a plea or finding of guilt, not sentencing. Statutory exceptions for not meeting the disposition time frame include: (1) the unavailability of the defendant, material evidence, or witnesses; (2) interlocutory appeals; or (3) other exceptional circumstances. Docket congestion cannot be an excuse. The court shall not dismiss a case or impose any other sanction for failing to comply with any of these time limits.

2) Plea Taking

The court need only advise the defendant that licensing sanctions will be determined based upon the master driving record maintained by the Michigan Secretary of State. (MCL 257.625b[4])

3) Second and Third Offenses

a) Prior statutory references are defined in MCL 257.625(11)(c).

b) If the prosecuting attorney intends to seek an enhanced sentence, second- or third-offense status must be charged in the complaint or information. (MCL 257.625[15])

Prior convictions are established at sentencing by one or more of the following: (1) a copy of a judgment of conviction, (2) an abstract of conviction, (3) a transcript of a prior trial or a plea taking or sentencing proceeding, (4) a copy of a court register of actions, (5) a copy of the defendant's driving record, (6) information contained in a presentence report, or (7) an admission by the defendant. (MCL 257.625[17])

b. Sentencing

1) Conviction

A person convicted of attempted OWI, OWVI, or OWPD shall be punished as if the offense has been completed. (MCL 257.204b)

2) License Sanctions

License sanctions are based on the master driving record maintained by the Secretaryof State and are imposed administratively by the Secretary of State as indicated by statute. The court does not order licensing sanctions. (MCL 257.319, MCL 257.320a, MCL 257.625b[4])

3) Vehicle Immobilization

Vehicle immobilization is based upon the master driving record kept by the Secretary of State and is imposed by the court. Immobilization may not begin until after a jail sentence is served. Minimum and maximum days of immobilization are based on the number of prior convictions. (MCL 257.625[11][e], MCL 257.904d)

4) Criminal penalties (MCL 257.625)

The court shall impose a criminal penalty for a conviction of an attempted violation of the Michigan Vehicle Code or a local ordinance substantially corresponding to a provision of the Michigan Vehicle Code as if the offense had been completed. (MCL 257.204b) See the Criminal Sentencing/Administrative Consequences Chart in the Section 6 Appendix. A prior conviction means any conviction pursuant to MCL 257.625 and MCL 257.625m.

c. Conviction Occurring During a Period of Suspension, Revocation, or Denial

1) License Sanctions

A person convicted of or receiving a civil infraction determination for the unlawful operation of a motor vehicle or a moving violation reportable pursuant to MCL 257.732 that occurred during a period of suspension, revocation, or denial receives license sanctions based on the master driving record maintained by the Secretary of State and imposed by the Secretary of State as indicated by statute. The court does not order licensing sanctions. (MCL 257.904[10], [11], [12], [13])

2) Vehicle Immobilization

Vehicle immobilization is based upon the master driving record kept by the Secretary of State and is imposed by the court. Immobilization may not begin until after a jail sentence is served. Minimum and maximum days of immobilization are based on the number of prior convictions. (MCL 257.625[11][e], MCL 257.904d)

2. Testing for HIV, Hepatitis B Infection, and Venereal Disease

a. Authority

The authority for testing for disease/infection is MCL 333.5129. A model protocol and forms for this procedure were developed by the Michigan Department of Public Health. See copies of the forms in the Section 6 Appendix. See also SCAO-Approved form MC 234, Order for Counseling and Testing for Disease/Infection, in the Section 6 Appendix.

b. Definition

Cases involving an individual arrested and charged with violating MCL 750.145a, 750.338, 750.338a, 750.338b, 750.448, 750.449, 750.449a, 750.450, 750.452, 750.455, 750.520b, 750.520c, 750.520d, 750.520e, 750.520g, 333.7404, or a local ordinance prohibiting prostitution, solicitation, gross indecency, or the intravenous use of a controlled substance. Specific titles are as follows.

333.7404	Use of controlled substance or controlled substance analogue
750.145a	Accosting, enticing, soliciting child for immoral purposes
750.338	Gross indecency; between male persons
750.338a	Gross indecency; between female persons
750.338b	Gross indecency; between male & female persons
750.448	Soliciting and accosting
750.449	Admitting to place for purpose of prostitution
750.449a	Engaging services for purpose of prostitution, lewdness, or assignation, offer to engage; penalty
750.450	Aiders and abettors
750.452	House of ill-fame, keeping, maintaining
750.455	Pandering
750.520b	First-degree criminal sexual conduct
750.520c	Second-degree criminal sexual conduct
750.520d	Third-degree criminal sexual conduct
750.520e	Fourth-degree criminal sexual conduct
750.520g	Assault with intent to commit criminal sexual conduct

c. Responsibility of the Court

1) At Arraignment (MCL 333.5129[2])

If an individual has been arrested and charged with violating one of the statutes mentioned above, the judge or district court magistrate responsible for setting the individual's conditions of release pending trial shall distribute to the individual the

information on disease/infection required to be distributed by county clerks pursuant to MCL 333.5119(1). The judge or district court magistrate shall recommend that the individual obtain additional information and counseling at a local health department testing and counseling center regarding disease/infection. Counseling under this subsection shall be voluntary on the part of the individual.

2) Upon Bind Over (MCL 333.5129[3])

If a defendant is bound over to the circuit court and the district court determines there is reason to believe the offense involved sexual penetration or the exposure to a body fluid of the defendant, the district court shall order that the defendant be examined or tested for disease/infection and receive treatment or, at a minimum, the required information.

3) Upon Conviction (MCL 333.5129[4])

If a defendant is convicted of violating any of the above statutes, the court shall order, at conviction, that the defendant be examined or tested for disease/infection. Also, if a defendant is assigned to youthful trainee status rather than being convicted, the court shall order the defendant be tested.

Upon conviction or assignment to youthful trainee status for any of the above mentioned statutes, the court shall also order the defendant to receive counseling including, at a minimum, information regarding treatment, transmission, and protective measures.

4) Notice to Victims (MCL 333.5129[5])

If the victim (or person with whom the defendant engaged in sexual penetration during the course of the crime) consents, the court shall provide the person or agency administering the test with the name, address, and telephone number of the victim. After the defendant is tested, the persons or agency administering the test shall immediately provide the test results to the victim.

5) Keeping Records Confidential (MCL 333.5129[6])

The test results or any other research information obtained by the testing agency shall be transmitted to the court and, after the defendant is sentenced, made part of the court record. However, the records shall be confidential and shall be disclosed only to the defendant, the local health department, the Department of Community Health, and the victim, except as otherwise provided by law.

If the defendant is placed in the custody of the Department of Corrections, the court shall transmit a copy of the defendant's test results and any other medical information to the Department of Corrections. The statute does not address convictions by the district courts which result in jail terms.

MCL 791.229 makes circuit court probation records nonpublic. In *Howe v Detroit Free Press*, 440 Mich 203 (1992), the Michigan Supreme Court extended this statute to include district courts.

d. SCAO-Approved Forms

The following forms will be used by the district court in conjunction with testing and counseling for disease/infection:

1) Order for Counseling and Testing for Disease/Infection (MC 234).

2) Assignment to Youthful Trainee Status (MC 242).

The following form may be used depending on the local practice of the court:

1) Judgment of Sentence, Commitment to Jail (MC 219).

The following form may be used as determined necessary:

1) Order for Vehicle Immobilization (MC 267).

6-02 DELAYED SENTENCE

MCL 771.1(2) allows the sentencing judge to delay sentences for up to one year in cases where probation may be appropriate. The statute provides:

> [I]n an action in which the court may place the defendant on probation, the court may delay sentencing of the defendant for not more than one year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other such leniency as may be compatible with the ends of justice and the defendant's rehabilitation. When sentencing is delayed, the court shall enter an order stating the reason for the delay upon the court's records. The delay in passing sentence does not deprive the court of jurisdiction to sentence the defendant at any time during the period of delay. See *People v Monday*, 70 Mich App 518; 245 NW2d 811 (1976), *People v McLott*, 70 Mich App 524; 245 NW2d 814 (1976).

Probation is one of many options available to a judge as part of a sentence. When sentence is delayed, the judge may not place a person on probation and an Order of Probation (SCAO-Approved form DC 243) is inappropriate. The court should enter an Order Delaying Sentence (SCAO-Approved form MC 294) and may order supervision during the period of delay.

MCL 771.1 specifically authorizes a court to place a person on probation for violating a local ordinance. Therefore, the court may delay sentence after conviction for a violation of a local ordinance.

A defendant placed on a delayed sentence may be referred to the drug treatment court program pursuant to MCL 600.1070.

6-03 HOLMES YOUTHFUL TRAINEE ACT

A. Authority and Definition

MCL 762.11 and MCL 762.13 provide the sentencing judge with the means for ordering rehabilitative treatment and/or custodial supervision for up to two years in district court or up to three years in circuit court for:

1. persons charged with offenses other than

   a. a felony for which the maximum punishment is life imprisonment,

   b. a major controlled substance offense, or

   c. a traffic offense, and

2. juveniles over 15 years of age who have been waived from circuit court, without proceeding to an adjudication of guilt and a criminal conviction.

A defendant placed on youthful trainee status may be referred to a drug treatment court program pursuant to MCL 600.1070.

B. Conditions

1. The offense must have been committed on or after the offender's 17th birthday but before his or her 21st birthday.

2. The offender must consent to being placed on youthful trainee status.

3. The offender must plead guilty.

4. Upon violation of any term of probation, the court may terminate the youth's trainee status, enter an adjudication of guilt, and proceed with sentencing as provided by law. Credit must be given against the sentence for time served as a youthful trainee in a county jail. The court, as a condition of a commitment to the county jail or a condition of probation, may authorize work release or release for education purposes. The rights accorded probationers subject to revocation should also be applied to youths under youthful trainee status. See *People v Roberson,* 22 Mich App 664; 177 NW2d 712 (1970).

5. An assignment to the status of youthful trainee shall not be deemed to be a conviction of a crime and such person shall suffer no civil disability, right or privilege following his or her release from such status because of such assignment as a youthful trainee.

6. All proceedings relative to the disposition of the criminal charge and to the assignment as a youthful trainee shall be closed to public inspection, but open to the courts of the state, the Department of Corrections, the Department of Social Services and law enforcement personnel in the performance of their duties. Also, in providing required notice to victims, the probation officer may furnish information or records to victims that would otherwise be closed to public inspection. (MCL 780.752a, MCL 780.781a, MCL 780.811b)

C. SCAO-Approved Forms

The following forms should be used in conjunction with placement on youthful trainee status.

1) Assignment to Youthful Trainee Status (MC 242) – A copy of this form must be sent by the clerk of the court to the Michigan State Police Criminal Justice Information Center to create a criminal history record as required by MCL 769.16a.

2) Order of Probation, Misdemeanor (DC 243) – As a local option, this form can be modified to show that youthful trainee status has been assigned to an offender.

3) Petition and Order for Discharge from Probation (MC 245) – A copy of this form shall be sent by the clerk of the court to the Michigan State Police Criminal Justice Information Center to create a criminal history record as required by MCL 769.16a.

6-04 DEFERRED JUDGMENT OF GUILT

A. Controlled Substances, Public Health Code

1. Authority and Definition

MCL 333.7411 gives the authority to defer proceedings and impose probation with terms and conditions without a judgment of guilt for certain offenders charged with possession or use of certain drugs. A defendant placed on probation under a deferred judgment of guilt may be referred to a drug treatment court program pursuant to MCL 600.1070.

2. Conditions

a. The defendant must plead guilty or be found guilty of the offense, but no judgment of guilt is entered.

b. The defendant must consent to this status, but the prosecutor does not.

c. The only persons eligible are those with no prior drug convictions who are charged with possession of controlled substances pursuant to MCL 333.7403 (2) (a) (iv), (b), (c) or (d) or use of controlled substance pursuant to MCL 333.7404, or those charged either the first or second time with possession of imitation controlled substances pursuant to MCL 333.7341.

d. The defendant must be placed on probation by the judge.

e. The judge may require an instruction program on misuse of drugs or a rehabilitation program.

f. Jail time is allowable.

g. Discharging the defendant and dismissing charges after successfully completing any conditions of probation is mandatory and without adjudication of guilt.

h. There may be only one discharge and dismissal afforded to an offender under this status.

i. Upon fulfillment of the terms and conditions of probation, the Michigan State Police Criminal Justice Information Center shall retain a nonpublic record of an arrest and discharge or dismissal. This record shall be furnished to a court or police agency upon request for the purpose of showing that the defendant in a criminal action involving the possession or use of a controlled substance or an imitation controlled substance has previously used this status. A person subjected to a civil fine for a first violation of

MCL 333.7341(4) is not considered to have previously been convicted of an offense under this status. During the term of probation, the records maintained by the Criminal Justice Information Center and the court are public.

j. If a term or condition of probation is violated, the court may enter an adjudication of guilt and sentence the defendant.

B. Spouse Abuse Act

1. Authority and Definition

MCL 769.4a gives the authority to defer proceedings and impose probation with terms and conditions without a judgment of guilt for certain offenders charged with assault upon a spouse, former spouse, or household member. A defendant placed on probation under a deferred judgment of guilt may be referred to a drug treatment court program pursuant to MCL 600.1070.

2. Conditions

a. The defendant must plead guilty or be found guilty of the offense but no judgment of guilt is entered.

b. The defendant and the prosecuting attorney, in consultation with the victim, must consent to this status.

c. The only persons eligible are those with no prior convictions for assaultive crimes as defined in MCL 769.4a(7)(a).

d. The defendant must be placed on probation by the judge.

e. The judge may require the defendant to participate in and pay for a mandatory counseling program, and/or participate in a drug treatment court program.

f. The judge may order imprisonment within the period of probation for not more than the maximum penalty authorized for the underlying offense.

g. Discharging the defendant and dismissing charges after successfully completing any conditions of probation is mandatory and without adjudication of guilt.

h. If a term or condition of probation is violated, the court may enter an adjudication of guilt.

i. There may be only one discharge and dismissal afforded to an offender under this status.

j. Upon fulfillment of the terms and conditions of probation, the Michigan State Police Criminal Justice Information Center shall retain a nonpublic record of an arrest and discharge or dismissal. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action pursuant to MCL 750.81 or 750.81a has already once availed himself or herself of this section. In addition, in providing required notice to victims, the probation officer may furnish information or records to victims that would otherwise be closed to public inspection. (MCL 780.752a, 780.781a, 780.811b) During the term of probation, the records maintained by the Criminal Justice Information Center and the court are public.

C. Health-Care Professionals

1. Authority and Definition

MCL 750.430(8) gives the authority to defer proceedings and impose probation with terms and conditions without a judgment of guilt for licensed health-care professionals charged with engaging in the practice of his or her health profession with a bodily alcohol content of .05 or more, or while under the influence of a controlled substance causing a visible impairment to his or her ability to safely and skillfully engage in the practice of his or her health profession. A licensed health-care professional means an individual licensed or registered pursuant to article 15 of the Public Health Code, MCL 333.16101-333.18838. A defendant placed on probation under a deferred judgment of guilt may be referred to the drug treatment court program pursuant to MCL 600.1070.

2. Conditions

a. The defendant must be convicted pursuant to MCL 750.430.

b. The defendant and the prosecuting attorney must consent to this status.

c. The only persons eligible are those with no prior convictions pursuant to MCL 750.430.

d. The individual's conduct must not have resulted in physical harm or injury to the patient.

e. The terms and conditions of probation may include participation in a drug treatment court program pursuant to MCL 600.1060-600.1082.

f. The defendant shall be ordered to participate in the health professional recovery program established in MCL 333.16167.

g. Discharging the defendant and dismissing charges after successfully completing any conditions of probation is mandatory and without adjudication of guilt.

h. If a term or a condition of probation is violated, the court may enter an adjudication of guilt.

i. There may be only one discharge and dismissal afforded to an offender under this status.

j. Upon fulfillment of the terms and conditions of probation, the Michigan State Police Criminal Justice Information Center shall retain a nonpublic record of an arrest and discharge or dismissal. This record shall be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action pursuant to MCL 750.430 has already once availed himself or herself of this section. During the term of probation, the records maintained by the Criminal Justice Information Center and the court are public.

D. Liquor Control Code

1. Authority and Definition

MCL 436.1703 gives authority to defer proceedings and impose probation with terms and conditions without a judgment of guilt for a person who has not previously been convicted of or received a juvenile adjudication for a violation of that section. A deferred judgment of guilt is discretionary by the court if the defendant meets the statutory requirements.

2. Conditions

a. The defendant must plead guilty to the offense but no judgment of guilt is entered.

b. The only persons eligible are those with no prior convictions of this section, being a minor who purchases, consumes or possesses alcoholic liquor or attempts to purchase, consume or possess alcoholic liquor, or have any bodily alcohol content.

c. The defendant must be placed on probation.

d. The court may require participation in substance abuse prevention services or substance abuse treatment and rehabilitation services, community service, and to undergo substance abuse screening and assessment at the defendant's expense, payment of costs including minimum state cost and the cost of probation oversight.

e. In the case of a minor who is under 18 years of age and unemancipated, the parent, guardian, or custodian may request a random or regular preliminary breath test as part of

the probation. (MCL 436.1703[4])

f. Jail time is not allowable.

g. Discharging the defendant and dismissing the charges after successfully completing any conditions of probation is mandatory and without adjudication of guilt.

h. If a term or condition of probation is violated, the court may enter an adjudication of guilt.

i. There may be only one discharge and dismissal afforded to an offender under this status.

j. Upon placement on deferred sentence and probation, the court shall notify the Michigan Department of State of the deferred sentence and it shall retain a nonpublic record.

k. While on deferred sentence and probation, the court shall retain a nonpublic record.

l. Upon fulfillment of the terms and conditions of probation, the court shall notify the Department of State of the discharge and dismissal. The court and the department shall retain a nonpublic record of the plea and of the discharge or dismissal. This record shall be furnished to a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized this status. The record shall also be available to the Department of Corrections, a prosecutor, or a law enforcement agency upon request if the individual is an employee or applicant for employment of the requesting agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

3. Ordinance Violations

Deferred proceedings are allowed under this statute only for violations of this statute. Deferred proceedings are not allowed for a violation of a substantially corresponding local ordinance.

E. SCAO-Approved Forms

After determining that probation has been successfully completed, a petition for discharge from probation must be completed and submitted to the sentencing judge for approval and signature. After the sentencing judge signs the petition, the original should be placed in the court file and copies should be given to the probationer and placed in the probation file. An electronic transfer of the information contained in this order, or a photocopy of this order, must also be forwarded

to the Michigan State Police Criminal Justice Information Center. This form is necessary to ensure that official records of the probationer will be classified as a **nonpublic record** by the Criminal Justice Information Center.

The following forms should be used.

1) Order of Probation, Misdemeanor (DC 243) – The appropriate box must be checked under "Judgment of guilt is deferred under." Additionally, a photocopy of this order must be sent to the Michigan State Police Criminal Justice Information Center to create a criminal history record as required by MCL 769.16a.

2) Petition and Order for Discharge from Probation (MC 245) – The appropriate box must be checked indicating that the defendant is discharged from probation supervision and that the case shall be retained as a **nonpublic record** and a copy sent to the Michigan State Police Criminal Justice Information Center.

6-05 DRUG TREATMENT COURT

A. Authority and Definition

A drug treatment court is a court-supervised treatment program for individuals who abuse or are dependent upon any controlled substance or alcohol. An individual may not be admitted to a drug treatment court if he or she is a violent offender as defined in MCL 600.1060(g).

MCL 600.1070 gives the authority, upon agreement with the individual and the prosecutor, to sentence and impose probation with terms and conditions for a person who has met statutory eligibility requirements for drug court participation but who is not eligible for a deferred judgment of guilt under the drug treatment court statute. The court may also place a person in drug treatment court who is eligible for a deferred judgment of guilt under the Holmes Youthful Trainee Act (MCL 762.11), the Public Health Code (MCL 333.7411), the Spouse Abuse Act (MCL 769.4a), or the Penal Code (health-care professional) (MCL 750.430).

Section 6-04 discusses drug court participation by persons eligible for a deferred judgment of guilt pursuant to the drug treatment court statute.

B. Conditions

1. The defendant must plead guilty to the offense. A judgment of guilt is entered.

2. The defendant must be placed on probation.

3. The court may require participation in treatment and prevention services, education, and mandatory periodic and random testing for the presence of any controlled substance or alcohol in blood, urine, or breath.

C. SCAO-Approved Forms

After determining that probation has been successfully completed, a petition for discharge from probation must be completed and submitted to the sentencing judge for approval and signature. After the sentencing judge signs the petition, the original should be placed in the court file and copies should be supplied to the probationer and probation file. Although MCL 600.1076 requires the transfer of the information contained in this order to the Michigan State Police Criminal Justice Information Center, and the retention of the uniform citation as a nonpublic record, the Michigan statute is in conflict with federal law (42 CFR Part 2). The court must report the final entry of a conviction or dismissal to the Michigan State Police pursuant to MCL 769.16a without reference to drug treatment court.

The following forms should be used.

1) Order of Probation, Misdemeanor (DC 243) – The appropriate box must be checked under "Judgment of guilt is deferred under." Additionally, a photocopy of this order must be sent to the Michigan State Police Criminal Justice Information Center to create a criminal history record as required by MCL 769.16a.

2) Petition and Order for Discharge from Probation (MC 245) – The appropriate box must be checked indicating that the defendant is discharged from probation supervision and that the case shall be retained as a **nonpublic record** and a copy sent to the Michigan State Police Criminal Justice Information Center.

3) Judgment of Sentence/Commitment to Jail (MC 219) – Upon discharge from probation, the court must send a revised judgment to the Michigan State Police Criminal Justice Information Center. In addition to the sentence, the court must indicate whether the probationer successfully or unsuccessfully completed drug treatment court.

6-06 CONDITIONAL SENTENCE

A. Authority and Definition

Conditional sentences may be imposed where a fine or imprisonment is authorized by statute. MCL 769.3 provides if punishment for an offense is either a fine or imprisonment, a judge may sentence conditionally. The judge can order a fine with or without costs within a specified period of time. The defendant may be incarcerated for failure to pay.

B. Conditions

1. First offenders convicted of offenses carrying less than a five-year maximum may, in the alternative, be sentenced to a jail sentence not to exceed six months. (MCL 750.506)

2. Persons convicted for the first time of unauthorized use of a motor vehicle may have their sentences reduced to three months in the county jail or fined not more than $500.00. (MCL 750.414)

3. The defendant is entitled to a hearing prior to incarceration for his failure to pay a fine and/or costs as part of this type of sentence. (*Reardon v Georgia*, 461 US 660 [1983])

4. If the court imposes a conditional sentence, any restitution ordered shall be a condition of that sentence. (MCL 769.1a) The conditional sentence statute further states that, "if a person is convicted of an offense punishable by a fine or imprisonment or both, the court may impose a conditional sentence and order the person to pay a fine, with or without the costs of prosecution, and restitution as provided in section MCL 769.1a or the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, within a limited time stated in the sentence and, in default of payment, sentence the person as provided by law. . . . Except for a person who is convicted of criminal sexual conduct in the first or third degree, the court may also place the offender on probation with the condition that the offender pay a fine, costs, damages, restitution, or any combination in installments with any limited time and may, upon default in any of those payments, impose sentence as provided by law." (MCL 769.3)

   The court may impose imprisonment under the conditional sentence if the defendant fails to pay restitution. In determining whether to impose imprisonment, the court must take into account the defendant's employment status, earning ability and financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay before incarcerating the defendant. (MCL 780.826[11], MCL 769.1a, MCL 771.3[8])

5. When a person has been convicted of domestic violence, or when a prior conviction of domestic violence is included in a criminal history record which meets the definition of domestic violence in 18 USC 922(g)(9), a condition of probation prohibiting the defendant from possessing, carrying, or purchasing a firearm or ammunition should be included. See also Section 4-03.

6. If the court orders conditions reasonably necessary for the protection of one or more named persons, the court or a law enforcement agency within the court's jurisdiction shall enter the order or amended order of probation into the Law Enforcement Information Network (LEIN). If the order is rescinded or amended, the order in LEIN shall be amended or removed accordingly. (MCL 771.3[2][o], [4]) See also Section 7, page 7-05-03.

C. SCAO-Approved Forms

Conditional sentences must be specified on the Judgment of Sentence (SCAO-Approved form MC 219) and the Order of Probation (SCAO-Approved form DC 243), if applicable.

6-07 OTHER ALTERNATIVES

A. Community Service and Work Programs

Community service is often used as part of a sentence or probation term for various offenses. Community service may be performed in lieu of payment of discretionary assessments such as fines and costs. Community service may not be used to satisfy certain required assessments such as restitution, crime victim's rights assessment, and minimum state cost.

Work programs involve defendants who perform work in and on behalf of the community as part of a supervised crew. Many courts refer defendants to a work program administered by their funding unit or another agency. However, some courts run their own work program. Courts may order defendants into the work program as an alternative to a jail sentence, as a condition of probation, or when sentencing is delayed.

1. Authority

Where probation is an authorized sentence, in most but not all felonies and misdemeanors, the court may require the probationer to engage in community service as a condition of probation. (MCL 771.3[2][e])

As part of the sentence for a violation of operating a vehicle while intoxicated (OWI), operating while visibly impaired (OWVI), operating with presence of drugs (OWPD), minor in possession of alcohol, transporting or possessing open alcohol in a motor vehicle, and minor transporting or possessing alcohol in a motor vehicle, a court may order a person to perform community service as designated by the court without compensation for a specified period (MCL 257.624a[3], MCL 257.624b[1], MCL 257.625, MCL 436.1703[1]):
a. up to 360 hours for first offenses of OWPD, OWI, and OWVI.
b. between 30 and 90 days for persons with prior convictions of OWPD, OWI, and OWVI.

A prior conviction means any conviction pursuant to MCL 257.625(1), (3), (4), (5), (6), (7), (8), and (23), and MCL 257.625m.

2. Service Recipients

The best practice is to allow the defendant to choose from an inclusive list of governmental and nonprofit entities. However, it is acceptable if service recipients are limited to governmental entities. The court should never order the defendant to perform services for a specific individual or nonprofit entity. Courts should not order defendants to perform services for specific individuals or families even if the individuals are senior citizens or the families are low-income families.

3. Costs

A court may impose, as a cost, expenses incurred in providing oversight to the probationer. (MCL 771.3[5]) If the court assesses costs for participation in a community service or work program, costs must be limited to expenses the court actually incurs in administering the program. If the program is administered by the funding unit or another agency, the defendant should pay the costs directly to the community service or work program provider and the court should neither assess nor collect those costs.

If the program is administered by the court, the court must have a procedure for waiving costs for participation in cases of indigence. See Section 7-01-10 for information on receipting these costs.

4. Liability

Courts and other governmental units are generally immune from liability when engaging in discretionary activities that fall within the scope of their core functions. For instance, courts are not liable for the consequences of judicial determinations. By statute, a governmental unit is immune from suit for an activity which is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. (MCL 691.1407, *Ross v Consumers Power Co.*, 420 Mich 567; 363 NW2d 641 [1984])

As the scope of a governmental unit's activity expands beyond its core functions, its exposure to liability increases. Community service and work programs have liability concerns that are not generally present in the judiciary, including the possibility of injury to a person who is working on a job site and injuries or damages that person may cause to people or property while engaged in the community service or work program. Courts can reduce their potential exposure by:

- not determining the agencies for whom the probationer works,
- monitoring rather than overseeing the probationer's work, and
- ensuring that fees cover the cost of the program and do not result in a surplus.

The Attorney General has issued opinions that persons placed in community service programs are not employees of the governmental unit under the Michigan Workers Compensation Disability Act. It appears that participants injured in community service programs would not be entitled to workers compensation benefits. (OAG, 1983-1984, No. 6158, P. 129 [June 24, 1983], OAG, 1971-1976, No. 5061, P. 522 [June 28, 1976])

5. Insurance

Any community service or work program should take into consideration the safety of the participants and the public. Since governmental immunity may not provide complete coverage, the governmental agency running the program should explore the possibility of accident insurance for the participant and liability insurance for the community service or work program. Courts that run a community service or work program should consult with their insurance carriers and should include in their programs only those activities that are approved by their carriers. Insurance premiums may also be recoverable from probationers as expenses specifically incurred in providing oversight to the probationer. (MCL 771.3[5])

In OWI, OWPD, and OWVI cases, the statute authorizes reimbursement for the cost of supervision for defendants sentenced to community service. Arguably, the cost of providing insurance for community service or work programs is such an expense. (MCL 257.625[14])

B. Intensive Probation

1. Authority

Although intensive probation is not specifically mentioned, the authority for it can be found in MCL 771.3, which is the statute for probation conditions. As cited, probationers can be ordered to report "monthly, or as often as the probation officer may require."

2. Highlights

a. Applicants must first be screened to see if they meet the criteria for eligibility.

b. Probationers may be subject to close supervision, which may include a variety of conditions, but is not limited to, employment checks, home visits, daily contact with the probation officer, curfews, and submitting to a preliminary breath test (PBT).

c. Supervision is typically implemented during the first phase of a defendant's probation status and may not necessarily continue throughout the complete term of probation.

C. Victim Impact Panel

1. Authority and Definition

The victim panels are not dictated by statute. Victim panels are held nationwide and are

sponsored by the Mothers Against Drunk Driving (MADD) organization. They consist of a panel of victims and survivors of drunk-driving crashes, who speak briefly about their experience, which may include death of a loved one and/or injury to themselves. Drunk-driving offenders or other persons convicted of alcohol-related crimes can be required to attend as an element of their sentence. There is no interaction between victims and offenders. Any cost to the defendant for attending the program must be limited to the actual cost and cannot include any contribution used for political activity by the sponsor. A procedure must exist to waive the cost of attendance for any indigent defendant whose attendance is ordered by the court.

2. Forms

Forms can be obtained through the local chapter of MADD.

D. Tether/Electronic Monitoring and Detention

1. Authority

There is no statutory authority for this alternative.

2. Definition

A variety of devices may be used as an alternative to incarceration or for an early-release program. The devices include, but are not limited to, wrist bracelet, ankle bracelet, and television monitor with or without a preliminary breath tester attached. The devices may be monitored by telephone or radio frequency. The court has the authority to specify the terms, such as hours and location, for each individual case.

3. Violations

When sentencing a defendant for a probation violation, the defendant is not entitled to credit for time he or she spent on an electronic tether program. (*People v Smith*, 195 Mich App 147; 489 NW2d 135 [1992])

See also Section 7, page 7-03-02.

6-08 UNDER ADVISEMENT

A. Definition and Authority

To take a case under advisement is to take a plea of guilty and place the individual under the supervision of the court, without conviction or sentence, for a specified period of time.

No statutes or court rules have been identified that authorize district courts to take a plea of guilty under advisement.

6-09 PROBATIONARY SENTENCES

A. Authority and Definition

The authority for probationary sentences is found in MCL 771.1(1). Probation may be imposed for all misdemeanors, ordinances and felonies **except** for murder, treason, armed robbery, major controlled substances offenses, and first- and third-degree criminal sexual conduct. An individual guilty of criminal contempt may also be placed on probation. (MCL 600.1715)

B. Conditions

1. The maximum term of probation is five years for felonies and two years for misdemeanors. (MCL 771.2[1])

2. The maximum term of probation is five years for misdemeanor stalking and misdemeanor child abuse. (MCL 750.411h[3], MCL 750. 136b, MCL 771.2a)

3. Life probation is authorized for **some** offenses of the Sex Offenders Registration Act. (MCL 771.1[3])

4. A probation term of five years is required for a person found guilty but mentally ill. (MCL 768.36[4])

5. A term may be reduced at the discretion of the court except for lifetime probation and the five-year mandatory probationary term for guilty but mentally ill defendants. (MCL 771.2[2])

6. The judge must order that the probationer:

    a. must not leave the state without judicial consent,

    b. report regularly to a probation officer,

    c. refrain from violating any criminal law of Michigan, the United States, or another state or any ordinance of any municipality in Michigan or another state,

    d. shall pay restitution to the victim of the defendant's course of conduct giving rise to the conviction or to the victim's estate,

    e. shall pay an assessment ordered pursuant to MCL 780.905,

    f. shall comply with the Sex Offenders Registration Act if required to be registered pursuant to the act, and

g. shall pay the minimum state cost prescribed by section 1j of chapter IX. (MCL 771.3[1])

7. New conditions may also be imposed even though there has been no violation of the original order. (*People v Marks*, 340 Mich 495; 65 NW2d 698 [1954])

8. A court may suspend probation and then reinstate it as long as it occurs within the statutory maximum period. Probation must end either by revocation or termination at the end of that maximum. (*People v Sherman*, 38 Mich App 219; 196 NW2d 15 [1972])

C. Types

There are several types of probation: supervised, unsupervised, and nonreporting. See Sections 7-02 and 7-03 for more details.

6-10 FINANCIAL OBLIGATIONS

A. Authority and Definition in General

Sentences in Michigan can only be imposed in accordance with specific statutory authority. A term or condition of a sentence not expressly authorized by statute or a sentence in excess of that provided by a relevant statute is unlawful and must be vacated. (*People v Neil*, 99 Mich App 677; 299 NW2d 23 [1980])

Michigan law provides four categories of financial obligations for criminal offenses: fine, costs, assessments, and restitution. If the court requires the probationer to pay costs, the costs shall be limited to the expenses incurred in prosecuting the defendant or providing legal assistance to the defendant and supervising the probationer. The court must make findings regarding the defendant's ability to pay when ordering costs if the defendant asserts he or she is unable to pay. (MCL 771.3, *People v Music*, 428 Mich 356; 408 NW2d 795 [1987]) Restitution and special assessments should be ordered as required by MCL 771.3(1)(e) and (f). An order of restitution entered pursuant to the Crime Victim's Rights Act remains effective until it is satisfied in full. (MCL 780.826[13])

The probation statute specifically outlines how costs are to be determined and assessed. Minimum state costs shall be ordered as a condition of probation pursuant to MCL 769.1j and MCL 771.3(1)(g). Payment of restitution is regulated by MCL 780.826 and 780.827. MCL 771.3(6) and (7) provide as follows:

(6) If the court imposes costs as part of a sentence of probation, the following shall apply.

(a) The court shall not require a probationer to pay costs unless the probationer is or will be able to pay them during the term of probation. In determining the amount and method of payment of costs, the court shall take into account the probationer's financial resources and the nature of the burden that payment of costs will impose, with due regard to his or her other obligations.

(b) A probationer who is required to pay costs and who is not in willful default of the payment of the costs may petition the sentencing judge or his or her successor for a remission of any unpaid portion of those costs. If the court determines that payment of the amount due will impose a manifest hardship on the probationer or his or her immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

(7) If a probationer is required to pay costs as part of a sentence of probation, the court may require payment be made immediately or the court may provide for payment to be made within a specified period of time with specified installments.

For more information, see also Section 3-04.

B. Fine and Costs

1. Authority

A penal fine and costs are imposed only pursuant to statutory authority. (MCL 769.1k, MCL 769.3, MCL 771.3)

2. Credits to Fine

Jail time must be credited against a fine if **only** a fine is imposed. The judge must credit the defendant $5.00 for each day previously served in jail in lieu of posting bail prior to conviction. (MCL 780.73)

3. Limitations on Costs

Court costs imposed as a condition of probation are limited to expenses specifically incurred in prosecuting the case, providing legal assistance to the defendant, and overseeing probation. (MCL 771.3[5]) Additional court costs incurred in compelling the defendant's appearance are allowed. (MCL 769.1k)

Costs which may not be considered in determining the amount of costs are: (1) juror per diem (*People v Hope*, 297 Mich 115; 297 NW 206 [1941]), (2) medical care for the defendant (*People v Kramer*, 137 Mich App 324; 358 NW2d 10 [1984]), and (3) maintenance of governmental agencies (*People v Teasdale*, 335 Mich 1; 55 NW2d 149 [1952]).

Minimum state costs of $50.00 for misdemeanors must be a condition of probation. (MCL 769.1j) The minimum state cost is assessed when any other combination of assessments is ordered.

4. Finding of Ability to Pay

A judge must make a finding on the defendant's ability to pay when ordering court costs only when the defendant asserts he or she is unable to pay. The defendant waives the right to challenge an order on appeal if he or she fails to raise the issue in a timely manner. (*People v Music*, 428 Mich 356; 408 NW2d 795 [1987])

5. Restrictions

A defendant cannot be sentenced to imprisonment and to pay court costs or face additional

jail time. A sentence of this nature is outside the statutory provisions. (*People v Tims*, 127 Mich App 564; 339 NW2d 488 [1982], *People v Watts*, 133 Mich App 80; 348 NW2d 39 [1984])

C. Restitution

1. Authority

People v Neil, supra, stated that restitution may only be ordered when authorized by the specific penal statute pursuant to which the defendant is convicted. This case predates the Crime Victim's Rights Act, which was enacted in 1985 and, therefore, is no longer applicable with regard to restitution. MCL 780.826(2) states, "Except as provided in MCL 780.826(8), when sentencing a defendant convicted of a misdemeanor, the court shall order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make full restitution to any victim of the defendant's course of conduct that gives rise to the conviction or to the victim's estate." Similar language is included in MCL 769.1a.

Restitution shall be ordered as a condition of probation pursuant to MCL 771.3(1)(e). An order of restitution remains effective until it is satisfied in full. An order of restitution is a judgment and lien against all property of the defendant for the amount specified in the order of restitution. The lien may be recorded as provided by law. The order of restitution **must** be specified in the judgment of sentence or in a separate order of restitution. If probation is ordered, the order of restitution **must also** be specified in the order of probation.

2. Objections to Restitution

When restitution is imposed as a condition of probation and the defendant objects, the amount of the loss must be presented on the record. (*People v Music*, supra) If restitution is imposed pursuant to the Crime Victim's Rights Act, the court, in determining whether to order restitution, may order the probation officer to obtain relevant information. A dispute must be resolved on the record by a preponderance of the evidence.

3. Failure to Pay

If the court determines that a defendant has failed to pay restitution, before incarcerating the defendant for violating probation, the court must take into account: (1) the defendant's employment status, earning ability, and financial resources, (2) the willfulness of the failure to pay, and (3) any other special circumstances affecting the ability to pay. (MCL 771.3[8], MCL 780.826[11], [14])

A defendant who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the defendant or his or her immediate family, and if the court also determines that modifying the method of payment will not impose a manifest hardship on the victim, the court may modify the method of payment. (MCL 780.826[12])

4. Other

A judge may order that restitution be paid to an insurance company. (MCL 780.826[8]), *People v Bond*, 99 Mich App 86; 297 NW2d 620 [1980])

5. Wage Assignment

The probationer may be asked to agree to pay by wage assignment any restitution, assessment, fine, or cost imposed by the court. (MCL 771.3[2][f])

If the defendant misses two or more regularly-scheduled payments, the court shall order the defendant to execute a wage assignment to pay the restitution. (MCL 780.826[15])

D. Other Assessments

In addition to fines, costs, and restitution, conviction for some offenses may require other assessments.

1. Crime Victim's Rights Assessment

The court shall order each person charged with certain offenses that are resolved by conviction, assignment to youthful trainee status, delayed sentence or deferred entry of guilt, or in another way that is not an acquittal or dismissal, to pay an assessment of $75.00 for serious or specified misdemeanors and $130.00 for felonies, which is transmitted to the Crime Victim's Rights Fund. See a list of the specific offenses in the Section 6 Appendix. (MCL 780.905) The assessment required is in addition to any fine, costs, or other assessments imposed by the court. The assessment shall be ordered upon the record, and shall be listed separately in the judgment of sentence or order of probation.

2. Reimbursement of Emergency Response Costs

For specified crimes listed in MCL 769.1f, the court may order the defendant to reimburse the state or a local unit of government for expenses incurred in relation to the incident, including but not limited to expenses for an emergency response and expenses for prosecuting the person. If the defendant is placed on probation, any reimbursement ordered shall be a condition of that probation. The court may revoke probation if the defendant fails

to comply with the order and has not made a good-faith effort to comply with the order. In determining whether to revoke probation, the court shall consider: (1) the defendant's employment status, earning ability, number of dependents, and financial resources, (2) the willfulness of the defendant's failure to pay, and (3) any other special circumstances that may have a bearing on the defendant's ability to pay. (MCL 769.1f)

3. Drug Court Treatment Program Fee

If a person is placed in the drug treatment court, he or she may be required to pay a reasonable drug court fee that is reasonably related to the cost to the court for administering the drug treatment court program as provided in the memorandum of understanding pursuant to MCL 600.1062. The fee is transferred monthly to the court funding unit.

6-11 HABITUAL OFFENDER

The district court can enhance sentences for the habitual or repeat offender. For the most part, enhanced sentencing occurs for felony offenses. However, the district court can enhance sentences for the following misdemeanors:

1. OWI/OWVI/OWPD upon prior conviction (MCL 257.625[15]).

2. driving on a suspended license upon second offense or more (MCL 257.904).

3. checks without sufficient funds under $50.00 upon second offense or more (MCL 750.131).

4. prostitution upon second offense or more (MCL 750.451).

5. buying, receiving, possessing, or concealing stolen property under $100.00 upon third offense or more (MCL 750.535).

6. minor in possession of alcohol (MCL 436.1703).

7. selling or furnishing alcohol to a minor (MCL 436.1701).

NOTE: The defendant may only receive an enhanced sentence if he or she has been specifically charged and convicted as a repeat offender. (*People v Ancksornby*, 231 Mich 271 [1925])

6-12 SENTENCING HEARING

A. Right to Counsel

The presence of counsel is required in district court if the defendant has counsel, unless the defendant does not have an attorney or the presence of counsel is waived. (MCR 6.610[F][1]) An indigent defendant who is without an attorney and who has not waived the right to an attorney may not be sentenced to jail. (MCR 6.610[D][2]) See also Section 3-01.

A sentence may not be influenced by a defendant's past convictions obtained in violation of the right to counsel. (*United States v Tucker*, 404 US 443; 92 SCt 589; 30 LEd2d 592 [1972])

B. Who Should be Present

1. The defendant has the right to be present at sentencing. (*People v Bingaman*, 144 Mich App 152; 375 NW2d 370 [1984])

2. It is not required that the defendant have the right to be present at a presentence conference between the court and defense counsel. (*People v Pulley*, 411 Mich 523; 309 NW2d 170 [1981])

3. The judge's in-chambers conference with the prosecutor, in the absence of the defendant or defense counsel, entitled the defendant to resentencing. (*People v VonEverett*, 110 Mich App 393; 313 NW2d 130 [1981])

4. Where the trial judge held an ex parte conference with the victim prior to sentencing, outside the presence of the defendant and his counsel, after the defendant's plea was accepted but before sentence was imposed, the events were analogous to a presentence investigator's interview with the victim. Resentencing is not required. (*People v Rodriquez*, 124 Mich App 773; 335 NW2d 831 [1989])

5. The victim has the right to be present and make a statement at sentencing. (MCL 780.825)

6. The prosecutor has the right to be present at the sentencing and the right to challenge the accuracy or relevancy of any information contained in the presentence report. (MCL 771.14[5] and [6])

C. Disclosure of Presentence Report

1. The court must provide copies of the presentence report (if a presentence report was prepared) to the prosecutor and the defendant’s lawyer, or the defendant if not represented by a lawyer, at a reasonable time, but not less than two business days before the day of

sentencing. The prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, may retain a copy of the report or an amended report. If the presentence report is not made available at least two business days before the day of sentencing, the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, are entitled, on oral motion, to an adjournment to enable the moving party to review the presentence report and to prepare any necessary corrections, additions or deletions to present to the court, or otherwise advise the court of circumstances the prosecutor or defendant believes should be considered in imposing sentence. (MCL 771.14[5], MCL 6.610[F][1][b]) At the time of sentencing, either party may challenge, on the record, the accuracy or relevancy of any information in the presentence investigation report.

2. Defense counsel has a right to see the presentence report before sentencing in order to make sure the defendant's sentence is based on accurate information. (*People v McFarlin*, 389 Mich 557; 208 NW2d 504 [1973])

3. Any supplements to a presentence report given to the court must also be provided to the defendant or his counsel prior to sentencing the defendant. (*People v Matzat*, 108 Mich App 327; 310 NW2d 231 [1981], *People v Raymond*, 119 Mich App 413; 326 NW2d 526 [1982])

4. The court may exempt from disclosure:

   a. parts of the report which are not relevant to a proper sentence,

   b. diagnostic opinions that might seriously disrupt a program of rehabilitation, and

   c. sources of information that were obtained on a promise of confidentiality.

   d. upon request, an address or telephone number that would reveal the location of a victim or witness or a family member of a victim or witness unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual.

See also Section 4-03.

D. Probation Officer Responsibility

The probation officer may be called to verify or justify the presentence investigation report at sentencing. Depending on local practice, the probation officer may be called in-chambers to respond (informal) or be challenged on the record (formal). (MCL 771.14[6])

6-13 CRIME VICTIM'S RIGHTS FUND

A. Authority

The Crime Victim's Rights Fund was established by the Criminal Assessment Act of 1989 to compensate victims of certain crimes. District courts are required to order each person charged with a felony, misdemeanor, or local ordinance that is resolved by conviction, assignment to youthful trainee status, delayed sentence or deferred entry of guilt, or in any other way that is not an acquittal or unconditional dismissal, to pay an assessment that is transmitted to the Crime Victim's Rights Fund. (MCL 780.901 *et seq*.)

B. Responsibilities of the Court

The probation officer may be responsible for monitoring the payment of assessments. The crime victim assessment of $75.00 will be ordered on misdemeanors and local ordinances (limited to one assessment per case) for:

1. convictions,

2. assignments to youthful trainee status,

3. delayed sentences,

4. deferred entries of guilt, or

5. any other resolutions that are not acquittals or unconditional dismissals.

If the court allows fines, costs, restitution, and other fees to be paid in installments, 50 percent of all money collected shall be applied to victim payments (victim restitution and crime victim’s rights assessment). The balance shall be applied to all other assessments in the following priority:

1. payment of the minimum state cost,

2. payment of other costs,

3. payment of fines,

4. payment of probation supervision fees, and

5. payment of assessments and other payments.

(MCL 775.22)

Payments are applied 100 percent to victim payments when:

1. the person making the payment indicates that the payment is to be applied to victim payments.

2. the payment is received as a result of a wage assignment issued pursuant to MCL 780.766 and MCL 780.826.

3. the payment is received from the Department of Corrections or sheriff under MCL 780.767a and MCL 780.830a.

If a person has more than one proceeding in a court and if the person making the payment does not indicate the proceeding for which the payment is made, the court must apply the payment to a proceeding in which there is unpaid restitution.

(MCL 780.766a and MCL 780.826a)

C. Report of Nonpayment of Restitution

In each case where payment of restitution is ordered as a condition of probation, the probation officer shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. The final review shall be conducted not less than 60 days before the expiration of the probationary period. If it is determined that restitution is not being paid as ordered, the probation officer shall file a written report with the court and the prosecuting attorney using SCAO-Approved form MC 258, Report of Nonpayment of Restitution. (MCL 780.826[15]) See the Section 6 Appendix for a copy of the form.

In consultation with the local prosecuting official, providing a copy of the Motion, Affidavit, and Bench Warrant (MC 229), Motion and Summons Regarding Probation Violation (MC 246), or Petition and Order for Discharge from Probation (MC 245) may meet the notice requirement for unpaid restitution.

APPENDIX 6

Blood Alcohol Chart

Comparison Between Deferred Judgments, Delayed Sentences, and Traditional Sentences

Criminal Sentencing/Administrative Consequences

Minor in Possession of Alcohol and Intoxicants in a Motor Vehicle

Model Procedure for Court Ordered Counseling and Testing

Victim Authorization Regarding Notification of Test Results (DCH 1253)

Verification Regarding Test Results (DCH 1252)

Crime Victim Assessment/Minimum State Cost Chart

Order for Counseling and Testing for Disease/Infection (MC 234)

Judgment of Sentence, Commitment to Department of Corrections (CC 219b)

Judgment of Sentence (MC 219)

Order for Vehicle Immobilization (MC 267)

Assignment to Youthful Trainee Status (MC 242)

Order of Probation (DC 243)

Motion and Order for Discharge from Probation (MC 245)

Report of Nonpayment of Restitution (MC 258)

Financial Statement (MC 287)

Motion, Affidavit, and Bench Warrant (MC 229)

Motion and Summons Regarding Probation Violation (MC 246)

Probation

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Probation

7-01 GENERAL PROCEDURES

A. Referral for Investigation, Recording, and Assignment

1. Referrals

All referrals to a probation department from a court should be in writing with explicit instructions of what service the probation department is to provide according to the judge's order. See the Section 7 Appendix for a sample referral form. General internal procedures and paper trails vary widely between the district courts, but referrals to a probation department will typically be for one of the following categories of service:

a. bond investigations (see Section 2-01),

b. investigation of need for court-appointed attorney (see Section 3-03),

c. full presentence investigation (see Section 4-02),

d. abbreviated presentence investigation (see Section 4-02),

e. alcohol screening and assessment (see Section 5-03),

f. oral report (see Section 4-02), and

g. information and referral service (see Section 1-01).

2. Recording Procedures

When a written referral is received from the court, a central record (index card system) may be made within the probation department that includes the following:

a. the date of the referral,

b. the referring judge's name,

c. the court making the referral, if the department serves more than one court,

d. the defendant's name, date of birth, address, and phone number,

e. the offense, and

f. the type of probation service required.

Many times there will also be a service deadline date, such as the sentencing date, which should be included on the central logging device.

3. Assignment

A probation officer should be assigned to complete the required service and that officer's name should also be listed on the central log. If the department is organized into units, the responsible officer may change during the life of the case. For example, there may be one probation officer assigned to bond investigations, another to screening and assessment, and another to ongoing supervision.

A probation case file or folder is generally prepared upon initial referral. This file should be placed in the filing system of the assigned probation officer. At a minimum, this file should contain the same identifying information that is on the central record or log. A copy of the Order for Probation (DC 243) should be included.

B. Fingerprinting

MCL 769.1 states that the sentencing of a person convicted of a felony or a misdemeanor punishable by imprisonment for more than 92 days shall not occur until the court has examined the court file and has determined that the fingerprints of the person have been taken.

C. Probation Order

1. Purpose and Authority

The probation order is a document designed to make written notice of the judge's specific directions for action to all involved in a case including the probationer and the probation officer. See SCAO-Approved form DC 243 in the Section 7 Appendix.

MCL 771.2(3) stipulates that when a person is placed on probation, the court shall fix and determine the period and conditions of probation by order. The order is to be filed or entered as part of the case record.

The probation order delineates the actions required of the probationer and provides the framework for the probation officer's rehabilitative or supervisory actions with the probationer. All items on the document must have been specifically stated on the record by the judge. In *People v Sutton*, 322 Mich 104; 33 NW2d 681 (1948), the court held that the order of probation may not be altered, modified, or extended except by the court (judge), and this authority may not be delegated to others (probation officers) or assumed by them.

For the probation order to be correct and complete, the lines of communication between the judge and the person writing the document (probation order) must be open, efficient, and concise so that important details of the order are not neglected. The court reporter or

recorder can be an invaluable asset in determining exactly what was ordered if the written communications are unclear.

2. Written Record Required

The probation order must be in writing. It must be definite and certain in its provisions and must be sufficiently clear to enable the probationer to know what to do to comply with it. (*People v Sutton*, supra, *People v Hill*, 69 Mich App 41; 244 NW2d 357 [1976])

Oral, unrecorded instructions are not valid because they cannot be filed or entered. (MCL 771.1) If a probation order is ambiguous, it cannot be construed against the probationer in violation proceedings. (*People v Sutton*, supra) For example, when payments toward fines, costs, and restitution are required, the order should specify the amount of the payments and the frequency of the payments required by the probationer. If these have not been specified, the probationer's failure to make payments in the desired manner cannot be considered a violation of probation. (*People v Davenport*, 7 Mich App 613; 152 NW2d 553 [1967]) The statutes, laws, and cases note the importance of the probation order being written in a careful, legible and complete manner with a great deal of attention to the details of the judge's order. It is recommended that abbreviations and legal jargon be avoided, as these may be construed incorrectly by the probationer. In addition, shortcuts on the order, such as specifying Alcoholics Anonymous attendance but not clearly stating in writing how many meetings must be verified, would be determined ambiguous.

3. Preparation

The writing of the probation order appears to be a clerical task, sometimes handled by court clerks and sometimes by probation officers. However, this clerical task sets forth the goals to be accomplished during the probation period and can render probation services ineffective if carelessly prepared.

4. Conditions

a. Purpose

Conditions of probation can vary widely based on the rehabilitative needs of the probationer. A court may impose conditions of probation not specified by the probation statute. (*People v Dickens*, 144 Mich App 49; 373 NW2d 241 [1985]) Conditions should be rationally tailored to the defendant's rehabilitation program. (*People v Roth*, 154 Mich App 257; 397 NW2d 196 [1986])

b. Statutorily Required Conditions

MCL 771.3(1) stipulates that the conditions of probation shall include the following.

1) During the term of his or her probation, the probationer shall not violate any criminal law of this state, or any ordinance of any municipality in the state.

2) During the term of his or her probation, the probationer shall not leave the state without the consent of the court granting application for probation.

3) The probationer shall make a truthful report to the probation officer, either in person or in writing, monthly or as often as the probation officer requires.

4) The probationer shall pay restitution to the victim of the probationer's course of conduct giving rise to the conviction or to the victim's estate. An order for payment of restitution may be modified and shall be enforced as provided in Chapter IX.

5) The probationer shall notify the probation department immediately of any change of address and/or employment status.

6) The probationer shall pay an assessment ordered pursuant to MCL 780.905.

7) The probationer shall pay the minimum state cost prescribed by MCL 769.1j.

8) If the probationer is required to be registered under the Sex Offenders Registration Act, MCL 28.721-28.732, the probationer shall comply with that act.

These conditions are printed on the SCAO-Approved Order of Probation (DC 243). The conditions should be explained to each probationer if not fully stipulated on the probation order being used. These conditions, mandated by statute, need not be written on the order because a probationer is assumed to know them, and they are considered to be part of every probation order whether written or not. In reality, the probationer will not know these conditions unless specifically informed. Probation officers should describe them fully to probationers to avoid ambiguity.

c. Other Conditions

Additional conditions of probation are discussed in Section 6-09. They are also addressed in MCL 771.3. Briefly, they include:

1) incarceration,
2) fine, costs, assessments, wage assignment, reimbursement of county expenses,
3) community service work,

4) urinalysis, preliminary breath test, ignition interlock device,
5) tether/electronic monitoring/house arrest,
6) notification to probation officer of any change of address or employment status, and
7) other lawful conditions as circumstances of the case may warrant, such as treatment, employment, education, training, restricted travel, and restricted associations.

Michigan voters approved the medical use of marihuana in November 2008. (MCL 333.26421-.26430; Michigan Administrative Code R333.101-.133) Persons using marihuana to alleviate a debilitating medical condition may obtain a physician certification and register with the Michigan Department of Community Health. The person is then issued a registry identification card. However, marihuana possession and use are still illegal under federal law. If it was determined during presentence investigation or substance abuse screening that a probationer has been issued a registry identification card for this purpose and one of the conditions of probation is to undergo monitoring for drug use, the court may make appropriate findings of this fact on the record before entering the probation order, but will not necessarily indicate anything in the order about a probationer having been issued a registry identification card to use marihuana. The probation officer should make note of the “authorized” drug use in the probationer’s file for purposes of probation supervision. See also Sections 4-03 and 5-02.

The "other lawful conditions" will include both prohibitive conditions which forbid certain acts and affirmative actions that stipulate involvement in certain activities expected to assist the probationer in rehabilitative goals. The statute has been elaborated on by both Michigan and federal cases. Conditions must have a "reasonable relationship to the treatment of the accused and the protection of the public." (*Porth v Templar*, 453 F2d 330 [1971]) In addition, the conditions must be related to the defendant's rehabilitation and not "more likely to impede rehabilitation than to promote it." (*People v Higgins*, 22 Mich App 479; 177 NW2d 716 [1970])

If a condition of probation is for the protection of a named person(s), the court shall submit Part 2 of the Order of Probation to local law enforcement for entry into LEIN. The probation department must also submit amendments to the protective condition and notify LEIN to cancel the LEIN entry if the probationer is discharged prior to the expiration date of the order. If probation is extended beyond the original projected expiration date, and if the protective conditions will be extended, the court must also send an amended order with a new expiration date.

Sex offender registration is required of persons convicted of specified offenses. The probation officer is responsible for completing the registration form and submitting it to the local law enforcement agency or nearest Michigan State Police post. The Michigan State Police encourages courts with on-line LEIN access to complete the registration process via terminal rather than in paper format. A supply of forms can be ordered from

the Michigan State Police. See the Section 7 Appendix for a copy of the Michigan Sex Offender Registration form.

MCL 28.725a imposes a $35.00 fee for each new registration. If the court registers the offender on-line in LEIN, the court must collect this fee. If the court sends the registration form to a local law enforcement agency for entry into LEIN, the court should not collect the fee. The agency entering the registration into LEIN will be billed for $25.00 of the fee. If the court collects the fee, the $10.00 balance remains with the court funding unit.

The court is required to revoke the probation or youthful trainee status of an individual who willfully violates the Sex Offenders Registration Act. Sex offender registration is not required for any person assigned youthful trainee status as of January 1, 2004, for any offense listed in MCL 28.722. (MCL 28.729)

NOTE: Payment of costs as a condition of probation is seen as reimbursement to the public and not as punishment. (*People v Teasdale*, 355 Mich 1; 55 NW2d 149 [1952]) Therefore, statute allows a judge, without a hearing, to set an amount reflecting the costs "reasonably related to the expense of the prosecution." (*People v Blachura*, 81 Mich App 399; 265 NW2d 348 [1978]) Costs are authorized as a condition of probation pursuant to MCL 771.3, or without probation pursuant to MCL 769.1k. In addition, costs as a condition of probation may be limited by the defendant's ability to pay, when the defendant raises the issue. (*People v Music*, 428 Mich 356; 408 NW2d 795 [1987]) See also Section 3-03.

D. Scheduling Appointments

1. Responsibility

The time frame within which an appointment is scheduled depends on the flow of cases in each court, as well as the service requested by the judge. A bond investigation or oral presentence report may require immediate service. A full presentence investigation (PSI) or partial PSI depends on the scheduled sentencing date. In some courts, the judge will stipulate the sentencing date while, in other courts, this date is set by the probation department.

2. Procedure

Appointments scheduled with a probationer should be noted in the probation case file. If the appointment is scheduled by a phone call, the arrangement should be noted in the file, dated, and signed or initialed by the probation officer. Some courts place on the probation order a condition that the probationer schedule an appointment within a certain number of days.

Written correspondence can be sent to the probationer's address designating an appointment

time, location, and purpose. A copy should be kept in the probation case file to document the contact. Officers should also record the appointment in their own daily appointment calendar, as well as on an office-wide calendar, if such a tool exists. This office-wide calendar can be very helpful to clerical staff in answering questions about appointments scheduled within the department.

For confidentiality purposes, it is recommended that appointment books be locked up when the office is closed and protected in the same manner as a probationer's files. The use of a pen in marking appointments in a daily appointment book assures a permanent record. If appointments are cancelled or postponed, it should be recorded in the probationer's case file, along with a notation whether the probationer or the probation officer required the action.

E. Maintaining Files - Documentation

1. Importance

The probation case file created at the time of referral serves to document that services are being provided as ordered in a responsible and timely fashion. It also verifies whether the probationer complied with the judge's order. With the increasing caseloads in most courts, actions of the probation officer or the probationer should not be left to human memory, but must be documented in the probationer's record, whether in a manual or an automated case management system. The file provides for continuity of service if cases are transferred to a different probation officer due to divisions of labor within the department or the original officer's retirement, resignation, or promotion to different duties.

2. Producing a Suitable Record

In order to produce a suitable record, the following conventions should be observed:

a. document actions in the probationer's record, whether in a manual or an automated case management system,

b. place the probationer's name in each entry (e.g., in a manual system, the probationer's name should be placed on each page of a document; in an automated system, the probationer's name should be entered in each field where prompted to do so),

c. date and initial each entry,

d. sign worker's full name at the bottom of a completed page of notes,

e. document contacts chronologically,

f. write legibly and spell correctly,

g. use only established and recognizable abbreviations,

h. record all phone conversations, in-person contacts and e-mails, and

i. record cancelled or postponed appointments.

3. Record Retention

Complete probation files must be kept for three years after closure or discharge before being destroyed by approved methods. See Section 9 for further details. See also Section 8-04 of the *Michigan Court Administration Reference Guide*, which can be accessed online at http://new.courts.mi.gov/Administration/SCAO/Resources/Pages/Michigan-Court-Administration-Reference-Guide.aspx .

4. Active and Inactive Files

There will be both active and inactive files in most probation departments. An example of an inactive file is when a probationer fails to comply with a judge's order to appear in court and a bench warrant is issued. The case is not discharged from probation, but becomes inactive while waiting for the probationer to be returned to the court on the bench warrant. If the defendant is not returned to the court on a warrant after a period deemed suitable by the court (e.g., seven years), the judge may review the warrant for recall and discharge the probationer at that time.

F. Sending Notice

A notice to appear (SCAO-Approved form MC 06) before the court should be prepared designating the sentencing date, time, and location. It is important to be sure that the defendant and the defendant's attorney are advised of the sentencing date in writing. In some courts this may be the court clerk's function, and in others it may be a function of the probation officer. Notices should be dated and signed by the preparer, with a copy in the probation file and another copy placed in the court record.

G. Conducting Appointment with Probationer

1. Time

The manner of conducting an appointment with a probationer should reflect the gravity of the business to be conducted. The appointment should begin at a specified time, adhered to by both the probationer and the probation officer if possible. It will demonstrate a lack of

respect for your clients if you keep them waiting in the same way their failure to appear on

time displays a lack of respect for your time and the court's orders. A reasonable time frame for the interview should be designated, with the appointment terminating at a specified time.

2. Setting

The interview should be held in a quiet and confidential setting so the probation officer can attend to the interview process and the probationer can feel free to disclose information without being overheard. All interviews should be conducted in a nonjudgmental and respectful manner.

3. Stating Purpose of Interview

The purpose of the interview should be clearly stated with an opportunity for the probationer's questions to be answered. Stating the purpose limits the topics of conversation, while stating how much time is available encourages the effective use of interview time.

4. Ethical Considerations

In providing services to clients, the probation officer's goal is to accomplish the tasks at hand while maintaining absolute respect for the client, as well as for the position of the probation officer. To do this, it is very important for probation officers to abide by the following recommended rules of conduct.

a. Never accept gifts of any size from a client. Any gift may be construed as a bribe.

b. Never accept gifts from service providers. Protect yourself from charges of graft.

c. Never fraternize with a client.

d. Never conduct any type of business transaction with a client.

e. Maintain a respectful attitude with clients at all times, use language that is professional and in no way demeaning to the client or your role as probation officer.

f. Never discuss a client's case outside the confines of your office and be careful even in the office that you cannot be overheard by other probationers being seen by another probation officer in the office.

g. Lock all your files in a secure cabinet at night, or at other times when your office is unattended, in an effort to ensure the confidentiality of the files is not compromised.

h. Never give a client money no matter how sad the story.

i. Never give your home phone number or e-mail address to a client. It sends a message of familiarity and can create dependency.

H. Immigration Notification

For all defendants born outside the United States, the probation officer may submit a District Court Information report to the Immigration and Customs Enforcement Office, Department of Homeland Security, for any person for which the court has entered a conviction. See a sample District Court Information form in the Section 7 Appendix. Holmes Youthful Trainee Act and other deferred judgment of guilt cases are not eligible for reporting unless the court revokes the status and enters a conviction. Reports can be sent to Immigration and Customs Enforcement, Attention DRO/CAP, Department of Homeland Security, 333 Mt. Elliot, Detroit, MI 48207.

I. Collecting Money

The Supreme Court Finance Department, through the State Court Administrative Office, recommends that all money assessed be collected in one place in the court, including fees, fines, costs and other assessments for civil, criminal, traffic, and probation. It is further recommended that probation department employees not handle any money. It is stated that probation officers are not authorized by statute to collect fines. (OAG, June 4, 1956, No. 2571)

J. Warrantless Arrest

A peace officer, without a warrant, may arrest a person if the peace officer has reasonable cause to believe the person has violated a condition of probation imposed by a court. (MCL 764.15[g]) See also Section 6-06-02.

K. Issuing a Bench Warrant or Summons

A bench warrant (SCAO-Approved form MC 229) is an order issued by a court for the arrest of a person who violates a court order. If a bench warrant is issued, the warrant tolls the term of probation until the defendant is arraigned on the bench warrant. (*People v Ritter*, 186 Mich App 701; 464 NW2d 919 [1991]) A summons (SCAO-Approved form MC 246) is an order to appear as directed and present to the court reasons and considerations as to why certain circumstances should be continued, permitted, or prohibited. Both actions can be initiated from the probation department. The probation file should document the dates initiated or issued.

L. Probation Violation

Additional information on probation violations is in"Monograph 7, Probation Revocation Proceedings," at http://new.courts.mi.gov/education/mji/Publications/Documents/Mono-7-Probation- Revocation.pdf, published by the Michigan Judicial Institute.

When a probationer fails to comply with any of the terms of the probation order, the probation officer should inform the court of this noncompliance. This can be done in one of the two following ways.

1. Diversion Processing of Alleged Probation Violations

Pursuant to a memorandum issued by the State Court Administrative Office in February 2006, a diversion process for alleged probation violations may be used in lieu of traditional probation violation procedures. The Governor's 2005 Jail Overcrowding Taskforce Report notes that courts can drastically reduce their dockets and the number of admissions to jail if they use a diversion process. See the Section 7 Appendix for a copy of the SCAO memorandum regarding this process and a sample diversion agreement.

If a probation officer chooses to follow the diversion process rather than pursuing formal violation proceedings, the diversion process must occur before any formal violation proceedings are commenced. The diversion process must also strictly adhere to the Michigan Court Rules.

If there is reasonable cause to believe a probationer has violated a condition of probation and the probationer and probation officer stipulate to additional conditions of probation in lieu of formal proceedings, a proposed amended order of probation must be submitted to the court for final determination.

If a probationer agrees to diversion in lieu of instituting formal proceedings, he or she must not be required to provide an admission of guilt or waiver of arraignment. Moreover, the court should not issue an Advice of Rights.

2. Motion for Probation Violation Hearing

If a probation officer chooses to follow the formal violation proceedings rather than the diversion process, the probation officer must initiate the probation violation process by Motion, Affidavit and Bench Warrant (SCAO-Approved form MC 229) or Motion and Summons Regarding Probation Violation (SCAO-Approved form MC 246). Both forms should allege each specific term of the probation order with which the probationer is failing to comply.

The probationer must receive a written copy of the acts or omissions charged against him or her that constitute a violation of probation. The probationer must receive this motion in sufficient time to obtain counsel and present witnesses. The motion should be specific as to the alleged violations and complete in the list of all terms violated. If the violation involves nonpayment of an outstanding amount owed to the court, the application of the 20 percent late penalty provided by MCL 600.8403 should be included in the petition. Any term not

addressed as part of the motion may not be addressed at the probation violation hearing.

If noncompliance pertains to nonpayment of restitution, the probation officer must complete a Report of Nonpayment of Restitution (SCAO-Approved form MC 258). See also Section 6-13.

3. Preparing for the Hearing

Documentation must be gathered to support the allegations during the violation hearing. This type of documentation would include court records of new convictions, police records of new arrests, and in-house files which document the probationer's failure to report to the probation officer or failure to fulfill monetary obligations where indigence has not been established. See also Section 7-05.

4. Probation Violation Hearing

If the probationer is found guilty or pleads guilty to the probation violation, the court may continue probation, modify the conditions of the existing probation, extend the probation period, or revoke the probation and impose a jail sentence. The court may require a presentence report. See Section 7-05 for more details.

5. Order Regarding Probation Violation

After the judge has sentenced the probationer on the violation, the judge's order must be documented in writing and placed in the court file. If probation is revoked, a discharge (SCAO-Approved form MC 245) must be completed. If probation is not revoked, an amended order of probation must be written and filed. In both cases, the probationer should receive a copy of the written document. A copy of these documents should also be placed in the probation case file. If a condition of probation was imposed for the protection of a victim, and if the victim requests, the court is required to notify the victim by mail if the probation order is terminated early. (MCL 780.768b, MCL 780.827b)

NOTE: Probation may not be revoked for failure to pay costs if the reason for nonpayment is the defendant's indigence. (*People v Terminelli*, 68 Mich App 635; 243 NW2d 703 [1976], *People v Lemon*, 80 Mich App 737; 265 NW2d 31 [1978]) See also Section 3-03.

M. Discharging a Probationer

MCL 771.5(1) provides for the discharge of probationers. When the probation period terminates, the probation officer shall report that fact and the probationer’s conduct during the probation period to the court. Upon receiving the report, the court may discharge the probationer from further supervision and enter a judgment of suspended sentence or extend the probation period as

the circumstances require, so long as the maximum probation period (two years for a misdemeanor) is not exceeded. SCAO-Approved form MC 245 can be used for this purpose.

MCL 771.6 states that when a probationer is discharged, an entry of the discharge shall be made in the records (case file and probation file) and the probationer is entitled to a certified copy.

Payment toward restitution shall continue after discharge from probation in accordance with MCL 780.826(13). The court may continue collection for fines, costs, and assessments after revocation and discharge. (MCL 769.1k) See Section 7-08.

The provision that unpaid supervision fees may not be suspended upon discharge from probation applies only to probation under the supervision of the Department of Corrections. (MCL 791.225a[6])

7-02 NONREPORTING PROBATION

A. Authority

MCL 771.3(1)(c) states that a probationer shall make a report to the probation officer on a monthly basis or as often as the probation officer may require. The report may be either in person or in writing. Nonreporting probation is most effectively conducted through written documents.

B. Responsibility of the Probation Officer

1. Monitoring the Probationer

The probation officer is responsible for informing the client of all terms of probation as written on the order, facilitating the probationer's compliance with these terms, monitoring the probationer's progress, and informing the court of the probationer's conduct during the period of probation when the probation is terminated. Similarly, if the probation officer believes the probationer has violated the terms of probation during the term of nonreporting probation, the officer should bring probation violation or revocation procedures (SCAO-Approved form MC 229 or MC 246).

2. Administrative Duties

The probation officer is responsible for documenting the probationer's compliance with the order. Requiring a monthly written report with attachments such as verifications for treatment, meeting attendance, payments to the court, pay stubs to prove employment, and hours logged in community service will assist the probation officer in this documentation. The probation case file should note when these written reports and other documents are received. A date stamp may also be affixed to the reports as they are received.

C. Responsibility of the Probationer

In all cases, the probationer is required to follow the conditions of probation mandated in MCL 771.3. See Section 7-01, page 7-01-04. There will probably be other terms on the probation order which may include assessment of fines and costs, community service work to be performed, or a specified treatment program to complete. The probationer is responsible for complying with any other conditions the order mandates in writing.

D. Referral Agencies

It is necessary for probation officers to know the referral agencies within their geographic area so treatment programs, educational or training programs, and community service opportunities can be found. See Section 1-01 for more on this case management function.

1. List of Community Resources and Referral Agencies

The probation department should maintain a list of community resources and referral agencies. Some examples are:

a. substance abuse treatment programs, such as

1) residential/inpatient,

2) intensive outpatient,

3) outpatient counseling, especially those that provide services to low-income or indigent clients, and

4) didactic/educational programs.

b. support group meetings, such as

1) Alcoholics Anonymous (AA), Narcotics Anonymous (NA), Gambler's Anonymous (GA), Cocaine Anonymous (CA), etc.,

2) Adult Children of Alcoholics (ACOA), and

3) support groups for situational traumas such as loss of job, divorce, or death of a loved one.

c. mental health agencies for evaluation and treatment.

d. employment and training programs.

e. adult education/high school completion program.

f. treatment facilities for batterers and abused spouses.

g. shelters for the homeless and for abused women and children.

h. community organizations willing to provide community service work opportunities for probationers.

2. Other Resources

a. Substance Abuse Service Delivery Network Directory of Programs

One resource for the probation officer is the Michigan Department of Community Health website at http://www.michigan.gov/mdch. This site provides information on the Office of Drug Control Policy, which oversees the treatment, prevention, education, and law enforcement efforts related to substance abuse in Michigan. Substance abuse services are provided through regional coordinating agencies. See the website for details.

b. United Way and Alliance of Information Referral Systems "2-1-1"

Another resource is "2-1-1," the Health and Human Resources equivalent of "9-1-1," sponsored by United Way and the Alliance of Information Referral Systems. "2-1-1" calls are free and are answered by professional information and referral specialists. Translation is available for non-English speaking callers. The database contains over 5,000 agencies with more than 20,000 public, nonprofit and faith-based health and human services programs. It is currently active in Calhoun, Clinton, Eaton, Hillsdale, Ingham, Jackson, Kalamazoo, Kent, Lenawee, Livingston, Macomb, Mason, Monroe, Muskegon, Oakland, Oceana, Ottawa, St. Joseph, Washtenaw, and Wayne counties, and across the Upper Peninsula.

c. Nonprofit Organizations

1) Community Service Sites

The probation department should develop local listings of nonprofit organizations that will provide community service work opportunities for probationers. It is helpful to establish a specific contact person at the community service site so communications between the probation officer and the site can be consistent. An organization may be more willing to accept probationers for community service work if the contact person knows they will have the support of the probation department if the probationer causes any problems.

2) Other Support Services

Many of the same organizations that provide community service placements may also provide services that will assist the probationer, such as transportation, shelter, food, and financial assistance. The probation officer needs to know what services these organizations provide and how to help probationers access them.

E. Forms

There are no SCAO-Approved forms for nonreporting probation. The probation department may want to develop forms for its own needs. A few examples include:

1) A.A. Verification.

2) Monthy Written Report.

3) Community Service Verification.

Examples of the forms can be found in the Section 7 Appendix.

7-03 REPORTING PROBATION

A. Authority

MCL 771.3(1)(c) states that a probationer shall make a truthful report to the probation officer on a monthly basis or as often as the probation officer may require. The report may be either in person or in writing. Reporting probation is conducted through face-to-face contacts and interviews.

B. Responsibility of the Probation Officer

1. Monitoring the Probationer

The probation officer is responsible for informing the client of all terms of probation as written on the order, facilitating the probationer's compliance with these terms, monitoring the probationer's progress, and informing the court of the probationer's conduct during the period of probation when the probation is terminated. Similarly, if the probation officer believes the probationer has violated the terms of probation during the term of reporting probation, the officer should bring probation violation or revocation procedures (SCAO-Approved form MC 229 or MC 246). All monitoring is done through face-to-face contacts and interviews.

2. Appointments

Scheduled appointments should be documented in the probation case file, noting whether the appointment was arranged by phone or correspondence. Any cancelled appointments should be noted as well, identifying who cancelled the appointment, why the appointment was cancelled, and the date and time of cancellation. The probation officer should note in the probation case file when a probationer fails to appear for an appointment. During the appointments, the probation officer is responsible for inquiring about the probationer's compliance with all conditions specified in writing on the probation order.

3. Administrative Duties

The probation officer is responsible for documenting the probationer's compliance with the order. Although the probationer is not required to prepare a monthly written report, written verifications for treatment, meeting attendance, payments to the court, pay stubs to prove employment, and hours logged in community service should be placed in the file to support the written case record prepared by the probation officer.

If a probationer misses two or more regularly-scheduled restitution payments, the court is required to order the probationer to execute a wage assignment (if employed). The probation

officer and chief judge should establish a procedure for this to occur.

C. Responsibility of the Probationer

In all cases, the probationer is required to follow the conditions of probation mandated in MCL 771.3. See Section 7-01, page 7-01-04. There will probably be other terms on the probation order which may include assessment of fines and costs, community service work to be performed, or a specified treatment program to complete. The probationer is responsible for complying with any other conditions as the order mandates in writing, including taking part in scheduling appointments and making himself or herself available to meet with the probation officer at the scheduled time.

D. Supervised Probation

1. Regular Supervision

Regular supervision of a reporting probation client generally involves face-to-face contact between the probationer and an assigned probation officer once a month. At this meeting, problems and progress regarding the terms of probation are discussed. Verifications of other court-ordered activities should be presented by the probationer, and copies should be placed in the case record.

2. Intermediate Supervision

In some situations, a probationer will be subject to a slightly-increased level of supervision and/or drug/alcohol testing that does not rise to the level of intensive supervision. This is sometimes referred to as “intermediate supervision” and is almost always the result of amended probation conditions after a probation violation. One such situation where intermediate supervision occurs is the diversion process referred to in Section 7-01 L. For details on the diversion process, see the Section 7 Appendix.

A probationer who meets the conditions for intermediate supervision may be placed on increased supervision and/or drug/alcohol testing for a short period of time (e.g., 30, 60 or 90 days). This increased supervision can be handled by either the assigned probation officer or one of the probation officers who handles intensive supervision for the time specified in the probation violation diversion agreement and the amended court order.

3. Intensive Supervision

In some courts, certain probationers who are at high risk of repeat offenses may be placed on intensive supervision by an assigned probation officer. This type of supervision requires

multiple weekly contacts with the probationer to closely monitor compliance and to provide support for the probationer's attempts to abide by the conditions of probation. Regular contacts may also be made with the probationer's employer, educational facility, community service site, and family members.

4. Electronic Monitoring/Tether

Electronic monitoring and tethering are also commonly known as “house arrest.” This method of supervising a probationer vastly restricts the client's freedom of movement during certain hours of the day but allows the probationer to continue to live in the community, work or attend school, support themselves or their families, and have access to community treatment or training resources. The probationer is restricted to the home except for certain prescribed activities during specified time periods. The house arrest and tethering programs should be specifically ordered by the judge, stipulating that the probationer be placed on house arrest, the hours of unrestricted movement to be allowed and the duration of the term of house arrest. See also Section 6-07-03 D.

There are various types of electronic monitoring systems. Local service providers can be contacted for the specifics of their programs, including fees the probationer is responsible for paying. A description of four systems follows.

a. Transmitter

This system requires the probationer to wear a "transmitter" on a legband that verifies the probationer's location through radio frequency signals to a "receiver" within that person's home. This receiver searches for the transmitter at regular intervals and, if it is unable to find the transmitter within its range, the receiver communicates this to the system's monitoring computer. This system has been used without phone lines in the home, but it is not as effective this way because information about the probationer's absence from the receiver's range cannot be immediately logged with the monitoring computer without use of a phone line. The receiver's range can vary, but most typically is a maximum of a 150-foot radius.

b. GPS

The GPS system uses the U.S. Department of Defense’s Global Positioning Satellites, the same network that oversees our nation’s safety day and night. A real-time monitoring system to ensure continuous operation supports this system.

Active Tracking GPS. This system offers a real-time map that reports the offender’s every movement. For increased security, it also allows for the ability to establish “hot zones,” which are areas the offender is not allowed to enter. Victims can participate, via pagers, by being notified of offender “hot zone” violations. This is an excellent system

for domestic violence, stalking and drug cases.

Passive Tracking GPS. This system offers conventional house arrest plus historical tracking of the offender's movements 24 hours a day. Once the portable tracking device is placed in the charging stand, located in the home, the system provides a map of the offender's past movements. "Hot zones" can also be implemented into this system.

c. Visual Telephone

This system makes use of a visual telephone which is placed in the probationer's home and connected to the telephone. Again, random phone calls are made to the probationer's home and, when the individual receives the call, he or she must "send" an image (a still picture) of themselves to the base station computer to verify their presence in the home. This system can also be set up to have a breathalyzer attached. The visual telephone will show an image of the probationer blowing into the breathalyzer and provide the blood alcohol level at the time of the random phone call.

d. SCRAM

SCRAM utilizes the science of transdermal alcohol testing to measure the amount of alcohol that migrates through the skin in order to determine a person's blood alcohol content. Offenders have no ability to ignore a request for testing or miss a scheduled test. SCRAM's transdermal testing eliminates both the need for supervision at the time of testing and offenders traveling to a testing center. Offenders are able to maintain a normal daily routine and are tested regularly. The ankle bracelet is both tamper proof and water resistant. Offenders have the ability to travel and still be monitored 24 hours a day.

E. Unsupervised Probation

Some courts may place probationers on a totally unsupervised probation term with no personal or written contacts required, except a final review which verifies the probationer has completed or refrained from certain activities as ordered by the judge.

F. Forms

There are no SCAO-Approved forms for probation reporting. The probation department may want to develop forms for its own needs. A few examples include:

1) A.A. Verification.

2) Monthly Written Report.

3) Case Notes Log.

4) Order for Electronic Monitoring.

Examples of the forms can be found in the Section 7 Appendix.

7-04 APPEALS FROM SENTENCE

A. Authority

The Michigan Supreme Court in *People v Pickett*, 391 Mich 305; 215 NW2d 695 (1974), established that a probationer has a right to appeal either an order of probation or a revocation.

MCR 6.445(H) states that a probationer has a right to appeal from a sentence of incarceration imposed pursuant to MCR 6.445(G) if the underlying conviction occurred as a result of a trial or the right to file an application for leave to appeal if the underlying conviction was the result of a plea of guilty or nolo contendere. These are specifically for offenses punishable by incarceration of six months or more. MCR 6.445(H) is inapplicable to district court misdemeanors.

Sentences are appealable based on an error of law only. They are not appealable because a probationer is resistant to the stipulations. The order or judgment of a district court may be reviewed only by an appeal to circuit court. (MCR 7.103) An appeal to circuit court may be taken within 21 days from the date of sentence, as noted on the Advice of Rights and Plea Information form (SCAO-Approved form DC 213). See the Section 7 Appendix for the form.

B. Procedure

There are no court rules applicable to misdemeanor cases which explain the procedures for sentencing and appointment of appellate counsel. District courts can follow the procedure specified in MCR 6.425; however, they are not required to do so.

C. Probation Officer's Responsibility

A probation officer **has no responsibility** regarding a probationer's desire to appeal a sentence. However, a probation officer will probably hear the probationer's dissatisfaction with a sentence. Probation officers should advise probationers who have a complaint to seek legal counsel or refer them to a low-cost legal aid service for advice. The Advice of Rights and Plea Information form (SCAO-Approved form DC 213) can be given to a probationer if the original has been lost or misplaced.

If an appeal is filed and is pending, the probationer remains under the jurisdiction of the court and its probation order unless the court orders otherwise. (MCR 7.108[C]) (Note: The case is not stayed unless bond is filed.)

7-05 PROBATION VIOLATION

A. Authority for Revocation

Probation is a form of leniency. It is not an automatic right, and it can be revoked. (MCL 771.4) If it appears to the sentencing court that a probationer is likely to again engage in an offensive or criminal course of conduct during the period of probation, the court may revoke probation. The court may also revoke probation if it determines the public good requires it. All probation orders can be revoked in any manner the court considers appropriate, whether for a violation or attempted violation of a condition of probation or for any other type of antisocial conduct or action. While probation can be revoked without a violation, this section discusses only those revocations resulting from violations or attempted violations of probation.

When probation is granted, a probationer agrees to the terms and understands that, for certain acts of misconduct, his or her probation may be terminated. When brought before the court charged with a violation of probation, a probationer is not charged with a new crime, but with a violation of the agreement with the court. A new count for violation of probation may not be added to the underlying criminal case.

Probation revocation proceedings cannot be commenced after the maximum period of probation permitted by law. (*People v Wakefield*, 46 Mich App 97; 207 NW2d 461 [1973])

The sentencing court does not lose the power to revoke probation due to the fact that the probationer violated the terms of his or her probation and managed to evade apprehension until after expiration of the maximum period of probation. (*People v Ritter*, 186 Mich App 701; 464 NW2d 919 [1991])

The maximum period of probation in misdemeanor cases in district court probation offices is two years, except with stalking and child abuse, which is five years. See also Section 6-09 and Section 7-05-02 for more information. (MCL 771.2a)

Additional information regarding probation violations may be obtained in "Monograph 7, Probation Revocation Proceedings," published by the Michigan Judicial Institute and available at http://new.courts.mi.gov/education/mji/Publications/Documents/Mono-7-Probation-Revocation.pdf .

B. Determining Nature of Violation

1. Definition of Violation

A violation of the terms of probation is either an act or the omission of an action by a probationer, where he or she fails to abide by all terms specifically set forth in the probation

order. A revocation cannot be based on conditions which are not prescribed by statute or which have not been included in the order of probation as entered and filed. (*People v McNeil*, 104 Mich App 24; 303 NW2d 920 [1981]) *McNeil* reinforces the importance of carefully and specifically prescribing all the judge's orders on the order of probation when it is written. Failing to do so can weaken the probation officer's position later.

A revocation cannot be based on an indigent probationer's inability to make payments as ordered as a condition of probation. (*People v Courtney*, 104 Mich App 454; 304 NW2d 603 [1981], *People v Baker*, 120 Mich App 89; 327 NW2d 403 [1982]) The court may, however, require a probationer to make a good-faith effort to find a job to make ordered payments.

2. Evidence

The acts or omissions of the probationer must be established by evidence collected by the probation officer and presented to the court. The evidence may include:

1. court records of new convictions,

2. police reports or a police officer's testimony,

3. case records reflecting the probationer's failure to report to probation,

4. court records indicating the probationer failed to pay fines, costs, or restitution as assessed (if not indigent), or

5. lab reports indicating the probationer has used drugs or alcohol.

A careful review of the probationer's order and file will help the probation officer decide what evidence must be collected to substantiate the allegation of a violation in the court. In *People v Baines*, 83 Mich App 570; 269 NW2d 228 (1978), it was established that violation of a condition of probation need only be shown by a preponderance of evidence. This preponderance of evidence rule is less stringent than establishing guilt beyond a reasonable doubt and can mistakenly lead to basing violation charges on an arrest for which the probationer has not yet been convicted. A probationer's term of probation may be revoked solely on the basis that the probationer has been arrested if there are verified facts in the record by which the court can find a violation of probation by a preponderance of evidence.

3. Preparing and Serving the Motion

The probation officer should prepare a Motion and Summons Regarding Probation Violation (SCAO-Approved form MC 246) or a Motion, Affidavit, and Bench

Warrant (SCAO-Approved form MC 229), depending on the court's preference. The motion must state the specific violations which the probation officer believes have occurred. Each condition of probation alleged to be violated should be listed in separate statements. The completed motion should be presented to the judge for approval and signature. Because the judge can only consider the violations included in the motion, it is imperative the probation officer include all violations in the motion.

The Motion and Affidavit must be countersigned by a deputized clerk or a notary. (MCR 3.606, MCR 2.113)

A violation of conditions reasonably necessary for the protection of one or more named persons which has been entered on LEIN in accordance with MCL 771.3 must be brought to the court by petition. Law enforcement has the authority to arrest a probationer without warrant for violating this condition pursuant to MCL 764.15(1)(g). Law enforcement must then follow the procedure in MCL 764.15e.

For all other conditions of probation, the entry on LEIN merely provides a mechanism for law enforcement to notify the probation officer or court that a probationer has violated the condition. The probation officer must then prepare a motion and affidavit regarding alleged probation violation and order or a motion and bench warrant for the court as required by MCR 3.606 and MCR 6.103(B) and (C). There is no statutory authority for a district court probation officer to request law enforcement to hold a probationer for an alleged violation without a warrant. See also Section 6-06, page 6-06-02.

People v McNeil, supra, also requires that conduct to be considered in the violation hearing must be charged on the petition alleging the probation violation. A court's decision to revoke probation cannot be based on uncharged conduct. Therefore, a careful review of the probationer's compliance with all terms of probation should be made before preparing the petition. For instance, it may be obvious to the probation officer that treatment has not been verified; however, if current criminal history and driver history records are not obtained, the officer may omit an important fact, such as a new offense by the probationer during the probation term. If this new offense is not included in the motion as presented to the probationer, it cannot be considered at the violation hearing.

C. Procedure for Arraignment

1. Issuing Summons or Warrant

On finding probable cause to believe that a probationer has violated a condition of probation, the court may: (MCR 6.445[A])

a. issue a summons (SCAO-Approved form MC 246) in accordance with MCR 3.606 and

6.103(B) and (C) for the probationer to appear for arraignment, or

b. issue a warrant (SCAO-Approved form MC 229) for the arrest of the probationer. An arrested probationer must be brought immediately before the court for arraignment.

2. Arraignment on the Charge

a. Advice of Rights

At the arraignment on the violation, the court must give the probationer written notice of the alleged violation and must advise the probationer of the right to contest the charge at a hearing and of the right to an attorney. If the probationer cannot afford an attorney, the court must advise the probationer that the court will appoint one at public expense. (MCR 6.445[B])

Even though a probationer charged with a probation violation has waived the assistance of a lawyer, the court must advise the probationer of the right to an attorney at each subsequent proceeding. (MCR 6.005[E], MCR 6.445[D])

In *People v Belanger*, 227 Mich App 637; 576 NW2d 703 (1998), the court stated that waiver of counsel procedures set forth in *People v Anderson*, 398 Mich 361; 247 NW2d 857 (1976), and MCR 6.005, specifically MCR 6.005(D), do not apply in probation revocation proceedings, but only that if counsel is waived, the trial court must thereafter comply with MCR 6.005(E). See also *People v Kitely*, 59 Mich App 71, 73; 228 NW2d 834 (1975), *People v Rial*, 399 Mich 431; 249 NW2d 114 (1976), *People v Ritter*, 186 Mich App 701, 706; 464 NW2d 919 (1991).

In *People v Radney*, 81 Mich App 303; 265 NW2d 128 (1978), the court stated that before a defendant may waive a hearing on the charges and admit to the violation of probation, the defendant must be informed of the right to a contested hearing and that there is an alternative to admitting the violation.

b. Release from Custody

The court must determine what form of release, if any, is appropriate. If the probationer is held in custody, the hearing must be held within 14 days after arraignment or the court must order the probationer released from custody pending the violation hearing. (MCR 6.445[B][4], MCR 6.445[C])

c. Scheduling the Hearing

The court must set a reasonably prompt hearing date or postpone the hearing at arraignment. Postponement of the hearing may be necessary when the alleged violation

is based on a criminal offense that is a basis for a separate criminal prosecution and the court is awaiting the outcome of that prosecution. (MCR 6.445[B][5] and [C])

3. Pleading Guilty at Arraignment

Pursuant to MCR 6.445(F), before accepting a guilty plea at the arraignment, the court must advise the probationer of several provisions:

a. that, by pleading guilty, he or she is giving up the right to a contested hearing,

b. if the probationer decides not to retain an attorney, the probationer must be informed that he or she is giving up the right to legal assistance at the arraignment, and

c. the maximum possible jail sentence for the offense.

The court must also ascertain that the probationer's plea is understandingly, voluntarily, and accurately made and must establish factual support for a finding the probationer is guilty.

D. Presentence Report and Recommendation on Violation

1. Requirement for Presentence Report

The district court is not required to consider an updated presentence report before sentencing a probationer who has violated probation. The portion of MCR 6.445(G) requiring a presentence report pertains to felony cases only where the probationer can be sent to prison. (*People v Crook,* 123 Mich App 500; 333 NW2d 317 [1983])

When a probationer is sentenced only to the county jail, an updated presentence report is not required. (*People v Blount*, 130 Mich App 804; 345 NW2d 203 [1983]) The judge, however, may request that an updated presentence report be completed, and the rule for content should be followed as in the original presentence report. (MCR 6.425, MCL 771.14) See Section 4-04 for more details.

2. Recommendation

In considering recommendations as part of an updated presentence report, the maximum sentence which may be imposed for a probation violation is the same as the maximum sentence for the underlying offense for which probation was originally imposed. (MCL 771.4) Probation is not a "sentence" which can be imposed again after revocation.

The maximum probation which can be imposed is a cumulation of two years. (*People v Williams,* 39 Mich App 402; 198 NW2d 27 [1972]) A brief probation term may be extended

to the maximum at any time as the result of revocation. However, if a probationer violates probation toward the end of a two-year probation term, probation cannot be extended because the two-year maximum has already been imposed.

E. Hearing

1. Presiding Judge

Probation violation hearings should be held before the original judge, if possible. If the probationer does not motion the court for disqualification of a new judge in a timely manner, it is not considered prejudice against the probationer if the original judge does not conduct the probation violation hearing. (*People v McIntosh*, 124 Mich App 705; 335 NW2d 129 [1983]) In *People v Manser*, 172 Mich App 485; 432 NW2d 348 (1988), it was determined that a probationer's conviction for a probation violation should be reversed where a probationer objected to proceeding before a different judge than the one who had imposed sentence and there was no showing that the previous judge was unavailable or unable to act.

2. Conduct of Hearing (MCR 6.445[D] and [E])

There are minimum due process requirements the court should observe at the hearing.

a. A written notice of the specific violations must be provided to the probationer.

b. Evidence against the probationer must be disclosed to the probationer.

c. The probationer must be given an opportunity to be heard in person, to present evidence, and to examine and cross-examine witnesses.

d. The probationer must be advised of the right to an attorney and, if unable to afford one, that the court will appoint one at public expense.

3. Findings of the Court

At the conclusion of the hearing, the court must find the facts specially, state its conclusions of law separately, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record. (MCR 6.403, MCR 6.445[E])

F. Sentencing/Revocation

1. Basis

a. A proceeding for probation revocation has two steps:

1) a factual determination that the violations charged in the petition of probation violation have occurred, and

2) a discretionary determination that proven charges warrant revoking probation.

b. If the court finds that the probationer has violated a condition of probation or if the probationer pleads guilty to a violation, the court may:

1) continue probation,

2) modify the conditions of probation, including a term of incarceration,

3) extend the probation period, or

4) revoke probation and impose a sentence of incarceration.

Probation officers should consider each of these options when making their recommendations. (MCR 6.445[G])

2. Right to Counsel

The probationer must be advised of the right to an attorney and, if unable to afford one, that the court will appoint one at public expense. (MCR 6.445[D])

In *People v Hazen*, 19 Mich App 576; 172 NW2d 860 (1969), the court stated that the right to counsel must be afforded where the revocation hearing includes sentencing. The probationer should have a reasonable opportunity to obtain counsel of his or her own choosing. If indigent, the court is responsible for appointing counsel.

The sentencing court may order the probationer to pay the costs of an appointed attorney as a condition of probation. (MCL 771.3)

G. Forms

1) Notice to Appear (SCAO-Approved form MC 06).

2) Motion and Summons Regarding Probation Violation (SCAO-Approved form MC 246).

3) Motion, Affidavit, and Bench Warrant (SCAO-Approved form MC 229).

4) Request for Court-Appointed Attorney and Order (SCAO-Approved form MC 222).

5) Advice of Rights, Revocation of Probation (sample).

6) Probation Violation Hearing Waiver (sample).

7) Consent to Administrative Sanction for Probation Violation (sample).

8) Waiver of Rights and Guilty Plea (sample).

9) Acceptance of Admission of Guilt to Probation Violation Charges (sample).

Examples of the forms can be found in the Section 7 Appendix.

7-06 TRANSFER

A. Request for Transfer

The vast majority of cases requiring transfer at the district court level will be within Michigan only. To transfer a probationer, the sentencing court must send a letter requesting supervision by the court where the probationer is residing. A copy of the probation order and the presentence report may accompany the request letter.

B. Response to Transfer

Upon receiving an affirmative response accepting the transfer, the sentencing court notifies the probationer of the transfer, the location and phone number of the new probation department, and the name of the person to contact at the supervising office. The notice should make clear it is the probationer's responsibility to contact the supervising office immediately.

C. Responsibilities

1. In-State

a. Fines, Costs, Restitution, and Supervision Fees

1) Sentencing Court

If there are fines, costs, and restitution assessed as part of the probation order, payments shall be made to the sentencing court.

2) Supervising Court

The supervising court will collect and retain any oversight fees assessed as part of the probation order.

b. Violations, Amendments, Bench Warrants, and Discharges

1) Sentencing Court

a) Amendments

It is the responsibility of the sentencing court to proceed on making needed amendments to the probation order when notified of this need by the supervising court. An amended order (SCAO-Approved form MC 244) should be forwarded to the supervising court.

b) Violations

If the supervising court notifies the sentencing court that a probation violation may have occurred, the sentencing court is responsible for starting the probation violation hearing procedure. If needed, the sentencing court is responsible for issuing any bench warrant.

c) Discharges

If the sentencing court receives a final report from the supervising court indicating that all conditions of probation have been satisfactorily met, the sentencing court must process the probationer's termination from supervised probation. A copy of the Motion and Order for Discharge (SCAO-Approved form MC 245) should be sent to the supervising court to close its file. The sentencing court should adjust its financial records by entering a credit memo for the oversight costs collected by the supervising court, with the reason specified.

2) Supervising Court

The supervising court is responsible for:

a) notifying the sentencing court of needed amendments to the probation order.

b) notifying the sentencing court of allegations that a probation violation may have occurred.

c) preparing and submitting to the sentencing court a final report of the probationer's conduct while on probation. The final report should be submitted at least 30 days before the ordered termination date so the sentencing court has time to determine the appropriate course of action. The case may be closed in the supervising court after receiving a copy of the petition and order for discharge from the sentencing court.

2. Transfers to Another State

a. Authority

Out-of-state transfers are handled by way of the Interstate Compact, which is an agreement between states for cooperative effort and mutual assistance in preventing crime. It describes the responsibilities of the sending state and the receiving state. (MCL 3.1012) The revised

rules regulating transfer of probation are available on the Interstate Commission for Adult Offender Supervision website at http://www.interstatecompact.org/

Michigan's Interstate Compact office is located at:

Interstate Compact
Department of Corrections
PO Box 30003
Lansing, MI 48909
(517) 335-6903

b. Eligibility

The Interstate Compact prohibits a misdemeanant offender under supervision in Michigan to relocate to another state without the other state's acceptance of the transfer of supervision. Effective January 1, 2005, in order to transfer under the compact, the offender must have at least one year of supervision and the offense must include one or more of the following:

- an offense in which a victim has incurred direct or threatened physical or psychological harm,
- an offense that involves the use or possession of a firearm,
- a second or subsequent misdemeanor offense of driving while (intoxicated or) impaired by drugs or alcohol, and/or
- an offense which requires sex offender registration in Michigan.

If an offender does not meet the above criteria and is allowed to go to another state without transfer through the compact, the sending state would be held responsible for supervision and the offender's actions while in the other state.

1) Other eligibility requirements, all of which must be met are:

a) at least six months left of supervision, AND
b) valid supervision plan in the other state, AND
c) substantial compliance with the terms of supervision, AND
d) resident of the other state or has resident family in the other state, AND
e) employable or has a visible means of support.

2) Transfer of Military Members

An offender who is a member of the military and has been deployed by the military to another state, and who meets the criteria in 1) a) and 1) e), shall be immediately eligible for transfer of supervision. In addition, an offender who meets the criteria in 1) a) and 1)

e), and who lives with a family member who has been deployed by the military to another state, shall be immediately eligible for transfer of supervision, provided that the offender will live with the military member in the receiving state.

3) Transfer Due to Relocation for Employment

An offender who meets the criteria in 1) a) and 1) e), and whose family member, with whom he or she resides, is transferred to another state and obtains full-time employment, shall be immediately eligible for transfer, provided that the offender will live with the family member in the receiving state, unless the receiving state can show good cause for rejecting the transfer request.

c. Procedure

Specific forms must be completed and sent to the Interstate Compact Office in Lansing to initiate the transfer. Probation officers wanting further information should call the Interstate Compact Office in Lansing. The office will provide a local contact in your county where the request for transfer forms may be obtained. Forms may also be obtained on-line at http://courts.michigan.gov/mji/adult_offender_sup.htm.

The Interstate Compact provides for each member state to establish a transfer fee. Michigan has established a $100.00 fee. Transfers from probation departments other than MDOC may establish any amount up to $100.00 and retain the fee locally, to be deposited with the court funding unit.

d. Limitations

The Interstate Compact Office works with district court probation cases on a somewhat limited basis because of the relatively short time period a district court probationer is on probation. Except for stalking and child abuse convictions, the maximum time period of probation for offenders in the district court is two years, with many probationers receiving terms of six months or one year. It is not recommended that a transfer application be initiated unless the probationer has at least six months remaining on the probation term.

7-07 EXTENSION

A. Authority

At the end of the probation period, the probation officer must report the fact to the court and report the conduct of the probationer during the term of probation. The court may extend the probation period as circumstances may require, as long as the maximum period of probation is not exceeded. (MCL 771.5) Except for stalking and child abuse convictions, the maximum period for a term of probation for misdemeanor offenses is two years. (MCL 771.2[1]) Extensions are one option available to the court as the result of a probation violation. (MCR 6.445[G])

B. Responsibility

The probation order may be extended only by the court. This authority cannot be delegated to others. (*People v Sutton*, 322 Mich 104; 33 NW2d 681 [1948]) Therefore, probation officers do not have the authority to extend probation.

C. Circumstances

1. A sentencing court may extend the period of probation even if there has been no probation violation, as long as the statutory maximum is not exceeded. (*People v Marks*, 340 Mich 495; 65 NW2d 698 [1954])

2. A probation order may be amended by the court to extend probation on an ex parte basis without giving the probationer notice and an opportunity to be heard. (*People v Kendall*, 142 Mich App 576; 370 NW2d 631 [1985])

3. The court may extend probation up to the statutory maximum upon finding a probationer has violated probation or upon receiving a plea of guilty regarding the charge of a probation violation. (MCR 6.445[G])

D. SCAO-Approved Forms

1) Petition/Order for Amendment of Order of Probation (MC 244).

An example of the form can be found in the Section 7 Appendix.

7-08 DISCHARGE

A. Authority

Upon termination of the probation period, the probation officer must report the fact to the court, including the conduct of the probationer during the period of probation. The court may discharge the probationer from further supervision and enter a judgment of suspended sentence. (MCL 771.5[1])

B. Reviewing the File

The probation officer should review the probationer's file in a timely fashion to determine the probationer's compliance with the conditions of probation as of the last-ordered day of probation.

The probation officer should:

1. carefully review the order for a listing of the conditions of probation and then compare case notes and documents, verifying such activities as treatment, AA attendance, and community service work hours to verify each condition was successfully completed by the probationer.

2. verify that all fines, costs, restitution, and supervision fees have been paid in full. If restitution has not been paid, a Report of Nonpayment of Restitution must be prepared (SCAO-Approved form MC 258). See also Section 6-13.

3. obtain a current criminal history from LEIN and a current driving record from the Secretary of State to ensure that the probationer has not incurred any new arrests or convictions during the term of probation. (Nonpublic record, see Section 8, page 8-02-01.)

C. Conditions Not Met

1. Time Available for Extension

If the probation officer is not satisfied that all conditions have been met, this information must be provided to the judge. The judge may extend the probation period for additional supervision, granting time for the probationer to complete the ordered conditions. A formal written extension order should be prepared, clearly stating the provisions so the probationer knows what he or she must do to comply. Oral, unrecorded instructions are not valid since they cannot be filed or entered on the court record. (MCL 771.2[2])

2. Time Unavailable for Extension

If the probation period cannot be extended because the maximum period has already been

met, the probationer must be discharged or the probation order must be revoked, depending on the circumstances.

3. Recovering Fines, Costs, and Other Fees

The court may collect unpaid fines, costs, and other fees once the probationer is discharged or the probation is revoked. (MCL 769.1[k]) See Section 3-04 for more details.

Pursuant to MCL 780.826(11) and (13), if the defendant is placed on probation, any restitution order pursuant to the Crime Victim's Rights Act shall be a condition of that probation. In addition, an order of restitution entered pursuant to the Crime Victim's Rights Act remains effective until it is satisfied in full. See Section 6-10 for further information.

D. Conditions Met

If the probation officer is satisfied the conditions of probation have been met, the probation officer should prepare a Motion and Order for Discharge from Probation (SCAO-Approved form MC 245) and present it to the judge.

E. Early Discharge

There are occasions when a probationer may receive an early discharge from probation. The petition and order for discharge should clearly state the reasons for an early discharge. If a condition of probation was imposed for the protection of a victim and, if the victim requests, the court is required to notify the victim by mail if the probation order is terminated early. (MCL 780.768b, MCL 780.827b) The probation officer must notify the law enforcement agency to cancel the protective probation order from LEIN (SCAO-Approved form MC 239).

F. Other Reasons for Discharge

Probation discharges may be issued for reasons other than satisfactory completion of probation. The following are some examples:

1. The probationer has died. The petition and order for discharge must be (1) accompanied by a death certificate, which can be obtained from a family member of the probationer, the Bureau of Vital Statistics, or the office of the city or county clerk, or (2) validated by a reliable source, such as the Social Security Death Index.

2. The probationer disappeared for a lengthy period of time and is later found. If deemed appropriate, the court may discharge him or her without punitive action.

3. The probationer has disappeared for a lengthy period of time and the likelihood of the probationer being located is remote.

4. The probationer appears to be incapable of improving his or her life circumstances but is not considered at risk for committing serious crimes.

5. The probationer is unable to meet the full obligations of the order but has made a good-faith effort to meet those terms which were possible, or made reasonable approximations of the specific terms.

G. Record of Discharge

When a probationer is discharged, the discharge order must be filed with the court. A copy of the discharge order should be placed in the probation file and a copy should be given to the probationer. All warrants for arrest must be recalled (SCAO-Approved form MC 220). (MCL 771.6)

H. SCAO-Approved Forms

1) Motion and Order for Discharge from Probation (MC 245).

2) Warrant Recall (MC 220).

3) Removal of Entry from LEIN (MC 239).

Examples of the forms can be found in the Section 7 Appendix.

7-09 PROTECTION AGAINST POSSIBLE EXPOSURE TO HIV, HBV, HCV

A. Authority

If a county employee or court employee who, while performing his or her official duties or otherwise performing the duties of his or her employment, determines that he or she has sustained a percutaneous, mucous membrane, or open wound exposure to the blood or body fluids of an arrestee or probationer, he or she may request that the arrestee or probationer be tested for HIV infection, HBV infection, or HCV infection pursuant to MCL 333.5204 only if he or she has received training in the transmission of bloodborne diseases under the rules governing exposure to bloodborne diseases in the workplace promulgated by the occupational health standards commission or incorporated by reference under the Michigan Occupational Safety and Health Act, MCL 408.1001 to 408.1094.

B. Request for Testing

1. Request Form

A probation officer who desires to make a request as described above shall make the request to his or her employer in writing on a form provided by the Department of Community Health as soon as possible, but not later than 72 hours after the exposure occurs. The request form shall be dated and shall contain, at a minimum, the name and address of the officer and a description of his or her exposure to the blood or other body fluids of the probationer. The request form shall also contain a statement that the probation officer is subject to the confidentiality requirements of MCL 333.5131 and MCL 333.5204(7). The request form shall not contain information that would identify the probationer by name except if necessary to identify the individual for purposes of testing. (MCL 333.5204[3])

See the Section 7 Appendix for a copy of the Department of Community Health's request form.

2. Employer Responsibility

The probation officer's employer shall accept as fact the probation officer's description of his or her exposure to blood or other body fluids and shall have the test(s) performed by the local health department or by a health-care provider designated by the local health department. If the probationer consents to the performance of the test(s) named in the request, the probation officer's employer shall have the probationer transported to the place of testing. (MCL 333.5204[4]) If the probationer refuses to undergo testing, the probation officer's employer may proceed with a petition to the family division of the circuit court or to the appropriate district court. See page 7-09-02.

3. Probation Officer Responsibility

In addition to preparing the request for testing, the probation officer is responsible for the reasonable and customary charges of each test, if those charges are not payable by the employer. (MCL 333.5204[5])

C. Petition for Testing

If the probationer refuses to undergo testing requested by the probation officer, his or her employer may petition the circuit or local district court for the county in which the employer is located for an order requiring the probationer to undergo testing. (MCL 333.5205[3], [7]) See SCAO-Approved form MC 72 in the Section 7 Appendix. A hearing before a judge is required within 24 hours of the date and time the petition is filed.

For more details, see MCL 333.5204 and 333.5205.

APPENDIX 7

Referral (sample)

Fact Sheet (sample)

Proof of Attendance at AA Meetings (sample)

AA Group Sign-In Sheet (sample)

Supervision Report (sample)

Case Activity Sheet (sample)

Probation Sign-In Sheet (sample)

Michigan Sex Offender Registration

Order of Probation (Misdemeanor) (DC 243)

Notice to Appear (MC 06)

Advice of Rights and Plea Information (DC 213)

Recall of Warrant/Order to Apprehend (MC 220)

Request for Court-Appointed Attorney and Order (MC 222)

Advice of Rights, Revocation of Probation (sample)

Probation Violation Hearing Waiver (sample)

Consent to Administrative Sanction for Probation Violation (sample)

Waiver of Rights and Guilty Plea (sample)

Acceptance of Admission of Guilt to Probation Violation Charges (sample)

District Court Information (sample)

Motion, Affidavit, and Bench Warrant (MC 229)

Petition and Order for Amendment of Order of Probation (MC 244)

Motion and Order for Discharge from Probation (MC 245)

Removal of Entry from LEIN (MC 239)

Motion and Summons Regarding Probation Violation (MC 246)

Report of Nonpayment of Restitution (MC 258)

State Court Administrative Office Memorandum (February 2006)

Probation Violation Diversion Agreement (sample)

Officer/Employee Request Form for HIV/HBV/HCV Testing (DCH-1169(E))

Petition for Testing of Infectious Disease (MC 72)

Michigan Supreme Court

State Court Administrative Office
Trial Court Services Division
Michigan Hall of Justice
P.O. Box 30048
Lansing, Michigan 48909
Phone (517) 373-4835

MEMORANDUM

DATE: February 2, 2006

TO: Judges
cc: Court Administrators
County Clerks
Probation Agents
Prosecutors

FROM: Dawn Childress, Management Analyst

RE: Diversion Process for Probation Violations

The Governor's 2005 Jail Overcrowding Taskforce Report notes that courts can drastically reduce their dockets and the number of admissions to jail if they utilize a diversion process for alleged probation violations rather than issuing Orders to Show Cause or bench warrants. Courts seeking to implement a diversion program rather than immediately violating probationers should work closely with their probation agents to establish guidelines.

Any diversion process that a court uses must strictly adhere to the Michigan Court Rules and must occur prior to the commencement of formal proceedings by a probation agent. If there is reasonable cause to believe a probationer has violated a condition of probation, and the probationer and agent stipulate to additional conditions of probation in lieu of formal proceedings, a proposed Amended Order of Probation must be submitted to the court for final determination. Once formal probation violation proceedings have been initiated and the court has found probable cause to believe that a probationer has violated a condition of probation and has issued a summons or warrant, an arraignment on the probation violation must be conducted. *See MCR 6.445*. **A probationer may not waive an arraignment on a probation violation.**

If a probationer agrees to diversion in lieu of instituting formal proceedings, he or she must not be required to provide an admission of guilt or waiver of arraignment. Additionally, the court should not issue an advice of rights. Attached is a template that courts may use in developing their diversionary processes. If you have any questions, please contact Dawn Childress at childressd@courts.mi.gov or 517-373-3756 or Sandi Hartnell at hartnells@courts.mi.gov or 517-373-0122.

PROBATION VIOLATION DIVERSION AGREEMENT

NAME:_____ **CASE FILE:_____**

I acknowledge that there is an alleged violation of probation. [I*nsert allegations]*

I understand that formal proceedings may be instituted on the allegation of violation of probation.

I understand that if formal proceedings are instituted and the court finds probable cause to believe that I have violated a condition of probation, I may appear before Judge _____ for arraignment on the alleged violation of probation.

I understand that the above allegations will be held in abeyance and will not be filed if I successfully complete: *[Insert individual diversion plan]*

I understand that if I am terminated from the program for any reason, the above allegations will be filed and additional charges may be added.

I understand that I will not receive jail credit for completing the program.

I agree to amend my Order of Probation to include the terms listed in this agreement.

I understand that this Agreement must be approved by Judge _____ and that a proposed Amended Order of Probation will be submitted for the court's approval or denial.

_____ _____

Probationer's Signature Date Probation Agent Signature Date

APPROVED

_____

Supervisor's Signature Date

Records Management

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8-01 MAINTAINING RECORDS

Every probation department should have a program for managing the creation, maintenance, and disposition of all relevant court records. Any records management program instituted should consider the handling of a case file from initiation to eventual destruction.

For details on records management, see Section 8 of the *Michigan Court Administration Reference Guide* at http://new.courts.mi.gov/Administration/SCAO/Resources/Pages/Michigan-Court-Administration-Reference-Guide.aspx and *Michigan Trial Court Case File Management Standards* at http://new.courts.mi.gov/Administration/jis/TechInitiatives/CourtTech/Documents/cf_stds.pdf .

A. Authority

MCR 8.119 governs records and entries kept by the district court clerk, as well as by a district court probation department.

B. Responsibility

The district court probation department shall keep in a probation case file, in such a form as may be prescribed by the district court, a copy of a probation order, as well as any other necessary forms or documents that may be relevant to the probation order.

C. Types of Records and Contents of Files

Probation case files may include the following items: probation order, community service referral forms, monthly report forms, relevant reports from substance abuse agencies, psychological or psychiatric reports, sex offender registration forms, and notes relevant to the probationer's standing and progress, among others.

8-02 RIGHT TO ACCESS RECORDS

A. Authority and Procedure for Accessing Information

Generally, unless access to a file is restricted by statute, court rule, or an order sealing records under MCR 8.119(F), any person may inspect pleadings and other papers in the clerk's office and may obtain copies as provided in MCR 8.119(E)(2) and (3). Every court shall adopt an administrative order to make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions. (MCR 8.119[E][4])

Access to a file may be restricted by court rule, statute, or a judicial order under certain circumstances. Case folders and related records (register of actions, indexes, court reporter notes, audio/video recordings, calendars, etc.) of certain types should be clearly marked as confidential. For information on confidential records, see "Nonpublic and Limited-Access Court Records" at http://new.courts.mi.gov/Administration/SCAO/Resources/Documents/standards/cf_chart.pdf .

The area containing restricted-access files that are frequently accessed should be away from the area accessible to the general public and unauthorized personnel and should be supervised. Each folder should be clearly identified to warn court personnel that access to the folder is restricted. The procedures and policies for restricted-access files should be explicitly stated in the court rules or clerk of the court's manual and periodically reviewed with all staff who come into contact with such files. The clerk of the court must also take precautions to maintain the confidentiality of pieces of information in restricted-access case files and other court records. This information includes confidential information regulated by Michigan or federal statute, federal regulation, or Michigan court rule.

When access to any court record or probation case file is restricted by statute, court rule, or order, the trial court should clearly mark the record "NONPUBLIC RECORD."

For more information, see section 1-03 of this manual. See also section 8-03 of the *Michigan Court Administration Reference* Guide at http://new.courts.mi.gov/Administration/SCAO/Resources/Pages/Michigan-Court-Administration-Reference-Guide.aspx and the *Michigan Trial Court Case File Management Standards* at http://new.courts.mi.gov/Administration/jis/TechInitiatives/CourtTech/Documents/cf_stds.pdf .

B. Access to Nonpublic Records and Privileged Information

When a court has ordered, or has pending before it a request to order, a limitation on public access to court proceedings or records of those proceedings that are otherwise public, any person may file a motion to set aside the order or an objection to entry of the proposed order. If the court denies the motion or enters the order after objection is filed, the moving/objecting party may file an application for leave to appeal in the same manner as a party to the action. (MCR

When public inquiry is made about a record the access to which is restricted by court rule or court order, court personnel should respond that "no public record exists."

C. Disclosure of Probation Records, Reports, and Case Histories

MCL 791.229 clearly makes all circuit court probation records and reports privileged and confidential. The records are not open to public inspection. Access is authorized only for judges, probation officers, the attorney general, auditor general, and law enforcement agencies. The overriding purpose is to protect the confidential relationship between the probation officer and the defendant. There is no similar protection or requirement for district court probation in statute.

In *Howe v Detroit Free Press*, 440 Mich 203; 487 NW2d 374 (1992), the Michigan Supreme Court considered whether a district court probation record was privileged. The court found that MCL 791.229 applied, and held that the record was privileged (although the privilege was waived in the case before the court). This case was decided after amendments to MCL 791.229 and involved a district court probation record created after the amendments. With this background, the Supreme Court ruled that MCL 791.229 created a privilege and the court implied that the statute applied to district court probation records.

The privilege protects the probationer, to the exclusion of others. A waiver signed by the defendant would allow a probation record to be released. Prior to releasing a probation record, the probation officer should receive a copy of the signed waiver.

A waiver of privilege by a probationer applies only to information or documents directly relating to the probationer. The probation officer must review the waiver in light of the request and provide only what is requested. Information within the probation file to which the probationer would not have a right to access, such as victim address and phone number, should not be released, even if the request and the waiver cover the entire probation file. If there is any question as to the appropriateness of release, the probation officer should seek guidance from the chief judge.

The privileged status of probation records may be compromised if such records are contained within the case file under the custody of the clerk of the court. It is recommended that with the exception of the probation order, any amended order, and the order of discharge, all probation records be kept separately from the case file maintained by the clerk. Requests other than a subpoena for access to probation records that may be in the custody of the court clerk must follow the procedures outlined in MCR 8.119(F).

MCL 28.214 creates misdemeanor and felony penalties for misuse of LEIN by way of improper access, use, or disclosure of nonpublic information. A person who intentionally discloses information governed by the Criminal Justice Information Systems (CJIS) Act may be charged criminally. (MCL 28.214)

D. Freedom of Information Act

Probation records or court records are often requested by an individual citing the Freedom of Information Act. (MCL 15.231 *et seq*.) The judiciary is specifically excluded from the definition of public bodies subject to the act.

E. Probation Officer Testifying in Court

If a probation officer receives a subpoena for a probation record, it is appropriate for the officer to attend the court hearing with the record requested and to advise the presiding official that the record is protected pursuant to MCL 791.229 and *Howe*. A waiver signed by the probationer would allow a probation record to be released, but only as to documents directly relating to the probationer. An order of the court would allow those parts of the probation record to be released that are included in the court's order. For further information, see Section 1-03.

8-03 RETAINING AND DESTROYING RECORDS

A. Maintenance Standards and Regulations

Records may not be disposed of, mutilated, or destroyed, except as allowed by statute or court rule. Minimum record retention schedules for use by the trial courts have been approved by the State Administrative Board. (MCL 399.5, MCL 600.2137, MCL 691.1101, MCL 600.8344, MCL 720.551, MCR 3.925)

B. Records Retention and Destruction Schedule

Records Title and Description	Minimum Retention Period
16.083 - Probation files and presentence reports*	3 years after discharge from probation
16.001 - Accounting records including books, ledgers, journals, etc.	6 years
16.001 - Bank statements, reconciliations, deposit slips, etc.	6 years
16.002 - Check books and canceled checks	6 years
16.001 - Requisitions - all categories	6 years
16.001 - Vouchers - all categories	6 years
16.004 - Personnel files	6 years after employment discontinued
16.005 - Personnel - job applications (hired or not)	3 years after filling position
16.019 - Statistical reports and general correspondence	1 year

The approved disposal methods of records are transfer, shredding, and burning.

* Probation case files may include the following: probation order, report of substance abuse assessment, monthly report forms, relevant reports from substance abuse agencies, psychological or psychiatric reports, and notes relevant to the probationer's standing and progress.

(Excerpt from *Records Retention and Disposal Schedule #16 – Michigan Trial Court* are at http://new.courts.mi.gov/Administration/SCAO/Resources/Documents/standards/cf_schd.pdf.)

Where applicable, computer records are the work products of any district court probation department and are to be treated in the same manner as other applicable items or records on the retention schedule.

C. SCAO-Approved Forms

The state court administrator, under the Supreme Court's supervision and direction, shall approve and publish forms as required by the Michigan Court Rules, and such other recommended forms as the administrator deems advisable. (MCR 8.103[9])

8-04 MANAGEMENT REPORTS

A. Authority and Responsibility

While there is no specific authority that requires a probation department to collect, maintain, and analyze statistical data regarding the preparation of management reports, there is, at least, an implied responsibility for this function under duties and responsibilities of district court probation departments.

Pursuant to MCL 600.8314, a district court probation officer, under the general direction of the chief judge, judge, or court administrator, shall prepare informational and demographic reports as may be needed and requested. Pursuant to this specific authority there is also an implied aspect of cooperation between a district court probation department and other integral members of the Michigan criminal justice system.

8-05 CRIMINAL RECORDS REPORTING

A. Authority

The Criminal Justice Information Center of the Michigan State Police is the state central repository for collecting and filing criminal history records. Local law enforcement agencies are required to take the fingerprints of any individual arrested for a felony or for a misdemeanor with a maximum penalty exceeding 92 days imprisonment or a fine of $1000.00 or more. Courts have an obligation to review these criminal filings at arraignment and before sentencing to ensure that the individual's fingerprints have been taken and to report the criminal disposition to the Criminal Justice Information Center. (MCL 28.241-28.247, MCL 764.29, MCL 769.16a)

B. SCAO-Approved Forms

The district court probation department will be involved in the criminal records reporting process to varying degrees as prescribed by the district court. Forms that a probation department will most likely complete are:

1) Order of Probation (DC 243).

2) Motion and Order for Discharge from Probation (MC 245).

8-06 DESTRUCTION OF FINGERPRINTS

A. Authority

If a person is found not guilty of an offense, the arrest card and fingerprints of the accused shall be destroyed by the local arresting agency and the Criminal Justice Information Center of the Michigan State Police within 60 days.

However, there are two provisions restricting the destruction of fingerprints: (1) the offense or attempted offense was a violation with or against a child under 16 years of age, criminal sexual conduct in any degree, rape, sodomy, gross indecency, indecent liberties, or child abusive commercial activities, or (2) the person has a prior conviction (except a misdemeanor traffic offense). (MCL 28.243) In addition, fingerprints of a defendant who received a discharge and dismissal pursuant to the Holmes Youthful Trainee Act or a deferred judgment of guilt must be maintained for the purpose of linking the person to the nonpublic record. (MCL 333.7411, MCL 436.1703, MCL 750.430, MCL 769.4a, MCL 762.11)

B. SCAO-Approved Forms

If the destruction of fingerprints and related information is not restricted and the accused wants to ensure that the local arresting agency has destroyed them as well, the accused may obtain an order from the court having jurisdiction over the case which requires the local arresting agency to destroy the fingerprints and arrest card and to provide certification of that fact to the accused. See SCAO-Approved forms MC 235 and MC 392.

Forms that will result in destruction of fingerprint and arrest information, if eligible, are:

1) Motion/Order of Nolle Prosequi (MC 263).

2) Order of Acquittal/Dismissal or Remand (MC 262).

3) Commitment Order Not Guilty by Reason of Insanity (MC 207).

Forms that permit a local arresting agency to destroy the fingerprints and arrest card are:

1) Motion for Destruction of Fingerprints and Arrest Card (MC 235).

2) Order Regarding Destruction of Fingerprints and Arrest Card (MC 392).

For more details, see SCAO Administrative Memorandum 2004-12, which can be accessed at http://new.courts.mi.gov/Administration/SCAO/Resources/Documents/Administrative%20Memoranda/2004-12.pdf .

APPENDIX 8

Commitment Order, Not Guilty by Reason of Insanity (MC 207)

Motion for Destruction of Fingerprints and Arrest Card (MC 235)

Order of Acquittal/Dismissal or Remand (MC 262)

Motion/Order of Nolle Prosequi (MC 263)

Order Regarding Destruction of Fingerprints and Arrest Card (MC 392)

References and Resources

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References and Resources

9-01 GENERAL

The most important resource available to the probation officer is the ability to network or communicate with others who work in the criminal justice system or a related field. Networking is a vital part of any agency or organization; it is a tool for obtaining information outside of the more formal means of communication.

There are several ways to network effectively. The most common is through daily contacts with local agencies and other probation officers. These contacts can be expanded by attending various agency, association, or organization meetings and conferences. Although the probation officer is often too busy to become involved in many external functions, efforts should be made to contact one another as a resource. Collectively, probation officers possess a wealth of information that covers the range of this manual and beyond.

9-02 LEGAL REFERENCES

A. Michigan Court Rules

The Michigan Court Rules govern practice and procedure in all courts established by the constitution and laws of the State of Michigan. These rules are the "Michigan Rules of Court - State." An individual rule may be referred to as Michigan Court Rule ____ (number), and cited by the acronym "MCR." The rules are to be construed to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties.

The Michigan Court Rules are published by West Publishing Company, Darby, and the Institute of Continuing Legal Education. Annotated Court Rules, which analyze and apply the court rules to specific cases, are also published by West Publishing Company and are entitled "Michigan Court Rules Practice."

The Michigan Court Rules are also available on the Michigan Supreme Court website at http://new.courts.mi.gov/Courts/MichiganSupremeCourt/Pages/current-court-rules.aspx .

B. Michigan Statutes

1. Michigan Compiled Laws and Michigan Compiled Laws Annotated

The Michigan Legislative Council, composed of Michigan legislators, as directed by the Michigan Constitution, caused to be compiled, without alteration, all laws of a general and permanent nature in force in Michigan and enacted through regular sessions of the Michigan Legislature.

The official Michigan Compiled Laws is published by the Legislative Service Bureau in Lansing, Michigan in the form of Public Acts and can be accessed on-line at http://www.legislature.mi.gov/(S(wvrvmtunybadof45xifcrg2s))/mileg.aspx?page=Home.

The Michigan Compiled Laws Annotated is published by West Publishing Company. Publications are supplemented yearly and advance sheets are published throughout the year as laws are passed. Editorial features and research aids incorporated into Michigan Compiled Laws Annotated (MCL) include the following:

a. Analysis of each chapter.

b. History notes to each section of the MCL, reflecting all amendments to that section since its enactment and the effective dates of those amendments.

c. Notes containing opinions of the Michigan Supreme Court and the United States Supreme Court regarding the constitutionality of acts or parts of acts.

d. Notes designating those statutes which transfer powers and duties from one state agency to another.

e. Notes indicating the origin and disposition of prior statutory provisions which carried the same compilation numbers, and accounting for similar provisions which being obsolete, superseded, or repealed by implication, no longer appear in the MCL.

C. Case Law

The following references can be used to research case law.

1. Michigan Appeals Court Reports

This report, published by Lawyers Cooperative Publishing, includes Michigan Court of Appeals cases and an alphabetical table of cases. Advance sheets are published periodically. Cases are also searchable at http://new.courts.mi.gov/courts/coa/pages/default.aspx .

2. Michigan Reports

This report includes the cases heard by the Michigan Supreme Court. It is published by Lawyers Cooperative Publishing. Advance sheets are published periodically throughout the year. Cases are also searchable on the Michigan Supreme Court website at http://new.courts.mi.gov/courts/michigansupremecourt/pages/default.aspx.

3. Michigan Digest

Available from Lawyers Cooperative Publishing as "Callaghan's Michigan Digest" and West Publishing Company as "West's Michigan Digest," this compilation is supplemented annually and advance sheets are published periodically throughout the year.

4. Reports of Supreme Court Decisions

This report includes cases heard by the United States Supreme Court and is published by West Publishing Company as the "Supreme Court Reporter" and Lawyers Cooperative Publishing as the "United States Supreme Court Reports, Lawyers Edition." Advance sheets are published periodically throughout the year.

See also the *Michigan Court Administration Reference Guide*, Section 10-02, at http://new.courts.mi.gov/Administration/SCAO/Resources/Pages/Michigan-Court-Administration-Reference-Guide.aspx

9-03 STATE AGENCIES

A. Department of Corrections, Policy Directives and Procedures

While the Policy Directives and Procedures of the Department of Corrections are aimed at parole officers, circuit court probation officers, and community residential programs, the district court probation department may find the information helpful in developing internal policies and procedures. On an individual level, the procedures themselves may provide direction or explanation to the probation officer in a variety of related areas. Copies of the policies and procedures can be requested from:

Department of Corrections
Office of Policy and Hearings
Policy and Rule Unit - Development Unit
Grandview Plaza Building - Fourth Floor
PO Box 30003
Lansing, MI 48909
(517) 373-3366
http://www.michigan.gov/corrections

B. Department of Community Health, Crime Victims Services Commission

The Department of Community Health, Crime Victims Services Commission maintains and awards funds as directed by the Crime Victim's Rights Act (formerly managed by the Office of Criminal Justice and the Office of Contract Management, Grants Management Division). This office is also involved in issuing restitution and coordinating compensation awards. The department can be contacted at:

Michigan Department of Community Health
Crime Victim Services Commission
Crime Victim Rights Assessments
320 S. Walnut St.
Lansing, MI 48913
(517) 373-7373
http://www.michigan.gov/mdch

C. Office of Highway Safety Planning (OHSP)

The National Highway Safety Act of 1966 charges each state with establishing a highway safety program. State programs are designed to reduce death, injury, and property damage caused by traffic crashes. In Michigan, the Office of Highway Safety Planning (OHSP) is

responsible for these programs. The funding for the programs comes from the United States Department of Transportation through the National Highway Traffic Safety Administration, as well as the Federal Highway Administration. The funding to OHSP is distributed at the state level in the form of grants for programs and activities that ensure the safe use of Michigan roads.

OHSP has provided grants for projects in alcohol counter measures (stopping drunk driving) and enhancing the enforcement of traffic safety laws statewide. Some of the programs provided by the Michigan Judicial Institute have been funded by the grants available through OHSP if they address issues relating to highway safety. OHSP has funded an intensive probation project in Michigan as an alcohol counter measure. Special projects have been funded to enhance the efficiency and effectiveness of the district court personnel in dealing with traffic cases. The office also produces public information materials to increase awareness of safety issues on Michigan roads. Another project area that benefits the district court and local law enforcement efforts is the testing of new technology and funding the installation of that technology in sites around the state.

A brochure detailing the services provided by OHSP is available by contacting:

Office of Highway Safety Planning
4000 Collins Road
PO Box 30633
Lansing, MI 48909-8132
(517) 336-6477
http://www.michigan.gov/msp

D. Michigan Department of Community Health – Office of Drug Control Policy

The Michigan Department of Community Health – Office of Drug Control Policy is the state level substance abuse authority. This agency is responsible for administering state and federal funds allocated to it for substance abuse prevention and treatment. It employs a sub-state structure to accomplish this task, contracting with 16 local coordinating agencies for the delivery of services in their respective areas. It also monitors the licensing requirements for courts that are designated screening and assessment agencies. Courts or probation departments seeking designation may contact the department at:

Michigan Department of Community Health
Office of Drug Control Policy
320 S. Walnut
Lansing, MI 48913
(517) 373-4700
http://www.michigan.gov/mdch

E. Michigan Resource Center for Health and Safety, Inc.

Another source for the probation officer is the Michigan Resource Center for Health and Safety, Inc. It is a statewide organization providing public traffic safety program materials, in addition to being a distribution source for prevention certification study manuals. The organization's mission is to save lives from traffic crashes and substance abuse through public education and legislative initiatives.

The primary resource available through the Michigan Resource Center for Health and Safety, Inc. is the prevention certification study manuals. To find out more about ordering these manuals, go to http://www.tsamichigan.org/education.html.

The organization can be contacted at:

Michigan Resource Center for Health and Safety, Inc.
3815 W. St. Joseph Street
Suite C-100
Lansing, MI 48917
(800) 487-6709
FAX (517) 267-8342
http://www.tsamichigan.org/

F. Michigan State Police - CJIS Field Services

For information pertaining to background screening of probation officers using fingerprint identification for authorization to use LEIN or for information about sex offender registration, the probation officer may contact CJIS Field Services at:

Michigan State Police
CJIS Field Services
(517) 636-4543
http://www.michigan.gov/msp

9-04 SUPREME COURT ASSISTANCE, TRAINING, AND EDUCATION

A. State Court Administrative Office

The State Court Administrative Office (SCAO) is responsible for assisting in the administration of the Michigan trial courts under the general direction of the Supreme Court. The functions of the SCAO are outlined in Michigan Court Rule 8.103. Those functions directly related to assistance, training, and education for trial courts are:

1. Providing management assistance and direction to the courts on the administration of the court through distribution of relevant information, advice and direction on specific issues, and on-site management reviews.

2. Developing and analyzing statewide information regarding the work of the courts.

3. Conducting research on court management issues.

4. Acting as liaison between courts, media, the executive and legislative branches of government, and state agencies.

5. Developing guidelines for operations and certain decision-making functions, such as child-support guidelines and sentencing guidelines.

6. Developing and maintaining automated trial court information systems.

7. Operating court improvement programs and other special state level court-related programs.

8. Analyzing administrative impact of court rules, legislation, and other administrative policy on court operations.

9. In conjunction with the Michigan Judicial Institute, providing training on court administration to judges and court support staff.

10. Developing forms and operations/reference manuals for court use.

11. Administering the certification of court reporters and recorders.

12. Managing the Foster Care Review Boards.

13. Managing the Friend of the Court Bureau.

For details, see Section 3 of the *Michigan Court Administration Reference Guide* at http://new.courts.mi.gov/Administration/SCAO/Resources/Pages/Michigan-Court-Administration-Reference-Guide.aspx.

The SCAO has a central office and four regional offices located throughout Michigan. The regional offices work directly with the courts in their region on a variety of local issues.

SCAO offices are located at:

State Court Administrative Office (Lansing)
Hall of Justice
PO Box 30048
Lansing, MI 48909
(517) 373-0130

Region I (Detroit)
PO Box 02984
Detroit, MI 48202
(313) 972-3300

Region II (Lansing)
Hall of Justice
PO Box 30048
Lansing, MI 48909
(517) 373-9353

Region III (Mt. Pleasant)
Box 750
Mt. Pleasant, MI 48804-0750
(517) 772-5934

Region IV (Gaylord)
PO Box 100
Gaylord, MI 49734
(517) 732-3311

B. Michigan Judicial Institute

The Michigan Judicial Institute (MJI) was created by the Michigan Supreme Court in 1977 to provide judges and court personnel with an opportunity to develop and enhance their professional skills. MJI develops and conducts a wide range of continuing education and training programs in the following areas: judicial education, court administrative personnel development, court professional personnel development, and Michigan court support staff training. MJI produces various publications to keep judges informed of the latest developments in Michigan law and procedure. MJI also maintains an audio visual lending library which supplements its seminars. For further information contact:

Michigan Judicial Institute
Hall of Justice
PO Box 30205
Lansing, MI 48909
(517) 373-7171
http://new.courts.mi.gov/education/mji/pages/default.aspx

9-05 ASSOCIATIONS

A. State Bar of Michigan

The State Bar of Michigan publishes an annual *Michigan Bar Journal*, which is a directory of State Bar functions, Michigan courts, federal courts and agencies, Michigan government, and members of the State Bar (including attorney addresses). Subscriptions to the monthly *Bar Journal* are also available. This monthly publication features: (1) analyses of legal issues, statutes, and court rules, (2) federal and Michigan case opinions, and (3) notices and articles on a variety of topics. Requests for information can be made to:

State Bar of Michigan
306 Townsend Street
Lansing, MI 48933-2012
(517) 346-6300 FAX (517) 482-6248
http://www.michbar.org/

B. American Bar Association

The American Bar Association (ABA) produces publications similar to those of the State Bar of Michigan. An *ABA Directory of Publications* is available at a minimal cost by contacting:

American Bar Association
321 North Clark St.
Chicago, IL 60610
(312) 988-5000 FAX (312) 988-6281, -6282, or -6283
http://www.abanet.org/

C. Michigan Association of District Court Probation Officers

The Michigan Association of District Court Probation Officers (MADCPO) is an organization founded in 1970 which provides its membership a directory of Michigan district court probation departments, quarterly newsletters, and an annual conference. For more details, see Section 1-05.

D. Michigan Corrections Association

The Michigan Corrections Association (MCA) is an organization aimed at promoting professionalism in the field of corrections. The primary purposes of the association are:

1. promoting interchange of ideas and experience at all levels concerning functions and methods in the field of probation, parole, and correctional institutions,

2. preventing and correcting delinquency and crime throughout Michigan,

3. providing adequate information to the public,

4. fostering sound legislation, and

5. promoting adequate services and facilities in the correctional field.

The MCA holds one to three mini-conferences each year and one annual conference in October of each year. The MCA is a dual-membership with the American Correctional Association.

Further membership information may be obtained from an MCA member or other professionals in the corrections field. Requests for information should be made to the American Correctional Association (see below).

The association's website is at http://www.micorrections.org/index.php.

E. American Correctional Association

The American Correctional Association (ACA) is a national, multidisciplinary organization consisting of correctional professionals and individuals, agencies, and organizations involved in the entire spectrum of correctional activities. ACA offers a variety of services for correction professionals such as standards and accreditation, technical assistance, publications, and training. Further information is available at:

American Correctional Association
206 N. Washington St.
Alexandria, VA 22314
(703) 224-0000
http://www.aca.org/

For membership information, address your request to the attention of "Membership." Calls can be made to (800) ACA-JOIN.